IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1479

LOCAL UNION No. 795, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, et al.,
Petitioners,

v.

MICHAEL J. McDONALD, et al.,
Respondents,

and

LOCAL UNION No. 795, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioners,

v.

Secretary of Labor, United States Department of Labor,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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April 13, 1976

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Secretary of Labor, United States Department of Labor,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners are the International Longshoremen's Association, AFL-CIO ("ILA"), its Local Union No. 795, Gulfport Mississippi, Fred R. Field, Jr., its Trustee, over said Local, and Harold Oliver, Ivy Herbert, Rudolph Tillman, Lynn E. Bangs, J. D. Scarborough and Samuel E. Moore, Local members cited in the proceeding below who were candidates for Local offices in an election on October 6, 1973.

The private Respondents are Michael J. McDonald, Eugene Ladner, Richard Clark, Norman J. Ladner, Tony Lamberg, Elmer Ford, Bernie Ray Saucier and Eugene Niolet who variously ran against the forenamed members in that election. Petitioners respectfully pray that a Writ of Certiorari issue to review the Judgment and Opinion in the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on January 14, 1976.

Opinions Below

The Opinion of the Court of Appeals is reported at 525 F.2d 1217. The underlying Opinion of the District Court for the Southern District of Mississippi, Southern Division, rendered on September 26, 1974, is reported at 400 F.Supp. 660. Its Order and Supplemental Opinion and Order have not been reported. These Opinions and Orders are set forth at Appendix "A" hereto.

Jurisdiction

The Judgment of the Court of Appeals was entered on January 14, 1976. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

Questions Presented

1) Does a District Court exceed its statutory jurisdiction and equitable powers when it:

a) terminates a parent-union's duly established Trusteeship over its Local in derogation of, and interference with the lawful and orderly conduct of, and rulings on internal affairs, preserved for unions by the Congress in enacting the L.M.R.D.A.;

b) awards retroactive payments and rules on prospective eligibility of a candidate for union office, neither

ancillary nor requisite to its termination of the Trusteeship under Title III of the L.M.R.D.A.?

2) a) Does a case persist before an Appellate Court and this Court where an intervening event, viz., a union election, claimed to moot a controversy, *per se* is tainted by the abovementioned provisions of and proscriptions in the District Court's underlying Opinion and Order?

b) If not, did the Appellate Court nevertheless erroneously and irreconcilably sustain the District Court's Award of incidental relief in precluding review of the primary issues on Appeal as moot and/or by improperly invoking an exception under the General American Rule, as defined by this Court, eschewing awards of attorney fees?

c) If so, should this Court exercise its supervisory powers to correct obvious errors and avoid inconsistent precedents?

Statutory Provisions Involved

These cases involve §§ 462, 464, 481, 482 and 483 of the Labor-Management Reporting and Disclosure Act of 1959, Pub. L. 86-257, Titles III and IV, September 14, 1959, 73 Stat. 531, 532 and 534. The pertinent provisions are set forth at Appendix B hereto.

Statement of the Case

The chronological sequence of events, including the course of litigation and determinations in the Courts below, serve to illustrate the errors claimed.

In *April 1971,* the ILA concluded its investigation of Charges by members of its Local No. 795, Gulfport, Mississippi. The Charges alleged, *inter alia,* that Local President Harold Oliver failed to implement the Seniority provisions under the portwide collective bargaining agree-

ments, including his resistence to the integration of seniority in hiring hall arrangements between that Local, whose members are white, and a sister Local Union No. 1303 then consisting of black longshoremen only. The ILA's Officials also were apprised of evident corruption and inequality in the administration of the joint-industry benefit funds covering members of both Locals. As a result, the ILA, consistent with the letter and intent of Section 302 of the Act (29 U.S.C. § 462), duly established a Trusteeship over the Local. Fred R. Field, Jr., ILA's General Organizer, was appointed Trustee. Field then perceived the essence of the problems under his mandate to "correct abuses in the administration of the Funds" and "to negotiate and put into effect a Seniority System that will protect all longshoremen." He therefore permitted Oliver and the other Local Officers to continue to run the detailed, day-to-day business of the Local and concentrated his experienced bargaining and administrative skills in the forenoted key areas.

In February 1973, a Complaint was filed with the Secretary of Labor seeking termination of the Trusteeship. The Secretary refrained from acting thereon when he learned, in or about *June 1973,* that the ILA was in the process of voluntarily ending the Trusteeship, inasmuch as Field had negotiated a single, portwide hiring hall in compliance with the Civil Rights Act of 1964 and essentially had corrected the irregularities in the administration of the Trust Funds. The Trustee established a timetable for dissolution of the Trusteeship and restoration of Local autonomy to its duly elected Officers, to be determined in an election on *October 6, 1973.*

The tally of ballots for office of President* shows that Respondent McDonald obtained a 21-vote plurality of 136

* The President, the only full-time, salaried officer, oversees the hiring system, adjusts grievances and otherwise is the operational agent for the membership.

ballots to Oliver's 115 and that E. J. LeBeau also received 66 votes. The balloting in contests for the other Local offices varied. (App. A at 25a *infra.*) In the wake of the election, the ILA's District and the International Officers received several letters of protest from rank-and-file members other than Respondents. They alleged McDonald's ineligibility for office because he had not been "working or seeking work in the industry" for a minimum of one (1) year prior to his nomination, as required by the ILA's Constitution; LeBeau's disqualification because he was a supervisor until shortly preceding his nomination; that Oliver had not paid his dues in time to run for office; that numerous members, including pensioners or those on the Local's disability list, were not in good standing as of the cut-off date, September 1, 1973; and that the candidates' poll watchers summarily were excluded from the polling area during the voting period, in violation of the Locals own Regulations governing that election as well as of the applicable provision of the Act.*

By letter of *October 22* to ILA President Gleason, Alben Hopkins, McDonald's attorney requested advice whether protests to the election had been filed and their bases, "so that the appropriate measures can be taken to insure the installation of the duly elected officers." On *October 24,* Gleason replied by enclosing the letters of protest abovenoted, pending receipt of the District President's recommendation. The recommendation requested a stay of the installation pending further investigation. Gleason concurred as did the ILA's Executive Council, comprised of 24 Vice Presidents located throughout the Union's jurisdiction in the United States and Canada, and 3 officers. They stayed the results and continued the Trusteeship,

* Section 401(c), 29 U.S.C. § 481 which, in pertinent part, provides:

"Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots."

pending only their review of recommendations by an investigating committee.

On *November 27,* the individual Respondents, though they had not filed a letter of protest to the election, neither with the Union nor with the Secretary of Labor, brought an action in their behalf in the U. S. District Court for the Southern District of Mississippi, Southern Division, under Titles I and III seeking, *inter alia,* removal of the Trusteeship, judicial declaration of the validity of the election, and their personal installations in office. On *January 9 and 10, 1974,* the investigating committee of 3 ILA Vice Presidents, took evidence from all concerned, including McDonald, on all of the issues raised by the protests. It concluded that McDonald and LeBeau* did not qualify as Presidential candidates and sustained the other objections enumerated above. It recommended that the October 1973 election be declared invalid and that a new election be held with proper safeguards.

On *January 14 and 15, 1974,* the District Court commenced hearing evidence on the Complaint. On *January 17,* Hopkins filed an appeal to the committee's recommendation and initially protested and objected to the failure of the Local or International to place his clients in office. On *January 24 and February 26,* Hopkins dispatched Complaints to the Secretary of Labor, similar to one he also prematurely had filed on *December 17, 1973. On February 15,* the ILA's Executive Council considered the Appeal, accepted the committee's report, set aside the election of October 6, 1973, and ordered a new election. On *February 28,* the Trustee removed all individuals, including Oliver, who were involved in the daily operations of the Local. He initiated procedures for a new election in a manner to assure no possible repetition of the earlier irregularities.

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* It is noted that LeBeau, a part of management prior to August 1973, from the ILA's view, was not working in the "trade or craft covered by" Local 795, a prerequisite to his nomination.

Field kept the Secretary of Labor fully informed of his actions. He invited him to oversee and/or participate in the election. Nevertheless, on *March 25,* the Secretary independently filed a Complaint. It recites that on the basis of *his* investigation, he concluded that the International and Local violated Section 401(e) of the Act (29 U.S.C. § 481(e)) through their failure to install the Officers "properly elected" in the October 6, 1973 election and violation of Title III by continuation of the Trusteeship.* The District Court consolidated the Complaints and granted the Secretary's Motion to restrain the ILA from conducting its election, then scheduled for *May 25, 1974.*

On *September 26, 1974,* the District Court issued its Opinion followed by a Supplementary Opinion and Order on *October 24.* The Court preliminarily noted that "all parties and the Court agree on the *futility* of dissolving the Trusteeship *until* such time as there are *properly elected* officers to take over management of the Union" (App. A at 9a). The Court thereupon reviewed the evidence and made findings as to each of the obections *already considered and acted upon* by the ILA's Executive Council; declared the individual Respondents to have been duly elected for two-year terms of office commencing *October 6, 1973* and terminating *October 5, 1975;* dissolved the Trusteeship; and enjoined Petitioners from declaring *McDonald* to be ineligible for Local office under newly revised By-Laws interpreted to also apply to the 1975 election. It further awarded back pay to McDonald and attorney fees and expenses, in excess of $11,000 *jointly and severally* against the Local, the ILA and Field and Oliver individually. The Court relied upon Title I (sic) and its own inherent equity power to validate the October 1973 election ... and to obviate a need for a new election. It further ac-

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* This Complaint was predicated on Hopkins' letters of October 22, 1973 to President Gleason and of January 25, 1974 to the Secretary.

cepted the Secretary's interpretation of Section 401(e) of the Act to require the installation of the individual Respondents.*

On *October 24, 1974,* Petitioners filed a Notice of Appeal in the Fifth Circuit. The transcript was not received until *January 1975,* and enlargements of time repeatedly granted the Respondents delayed filing of the Reply Brief to *May 5.* On *May 12,* Petitioners' Motions to Expedite the Appeal and for leave to proceed on the original typewritten record without requirement of an Appendix, grounded on the delays already incurred and the imminence of the termination of the incumbents' terms of office on *October 5,* were granted, "subject to the condition of the court's docket." On *June 27,* Counsel for Petitioners, having learned that the Court recessed, raised the expedition already granted and other, practical considerations, to cause the Court to reconvene. They were refused on *July 2.* The Court, though alerted to the problem, scheduled oral argument for *October 7.* The Secretary advised the Court that the election of Local Officers took place on *October 4,* and argued that the issues on Appeal thereby were rendered moot. Petitioners maintained that a "case or controversy" persisted; that the recent election, in which all Officers, including McDonald, were returned with one exception, were the fruits of the erroneous determinations and Order of the District Court, and recited the foregoing history of the appeal.

In its Decision on January 14, 1976, the Court of Appeals expressly found that the:

> ". . . expiration of plaintiffs' two-year term of office and the holding of a scheduled election for local officers while this appeal was in progress *has extinguished the underlying controversy* and rendered this case moot as to *all* issues. . . ." (App. A at 46a) (Emphasis added)

* Petitioners' Motions to Stay the Order and to Expedite Appeal were denied by the Circuit Court on November 7, 1974. As a result, the individuals assumed their offices on or about November, 1974 when the Trusteeship was terminated.

But the Court did not stop there! It consistently dismissed the Secretary' suit and the injunction-related issues asserted on behalf of the individual union-member Plaintiffs for mootness. It went on to recognize and approve termination of the Trusteeship which it attributed to the individual Respondents' Complaint but not to the Secretary's investigation and Complaint and further determined that the issues of back pay and attorney fees survived mootness of the substantive portions of the controversy (App. A at 48a-63a).

In adducing and confirming the back pay and fees, the Court, directly and indirectly, effectively reviewed and affirmed all aspects of the Decision below, under its own, *exclusively Title III,* rationale. Thus, through an analysis of the other issues and facts which were raised by Petitioners in their Appeal,* it concluded that the District Court correctly installed the Officers as a legitimate exercise of equitable powers ancillary to *its* termination of the Trusteeship. Yet, it further confirmed the award of back pay, for the entire preceding year, to McDonald. It sustained the award of attorney fees against the Local under a "common benefits" theory and, in addition, against the ILA, Field and Oliver by reference to the "bad faith" exception to the General American Rule, which ordinarily eschews such awards not provided for within the statutory framework. *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed. 2d 141 (1975). But,

* Included, *inter alia,* were arguments addressed to the applicability of Section 8 of the Labor-Management Relations Act as amended (29 U.S.C. § 158) to McDonald's candidacy, and exclusive treatment of post-election conduct under Section 402 of the Act involved herein and by the Union.

in so doing, it relied upon the factual findings of the District Court and its own references to, and conclusions from the record below. Finally, the Appellate Court implicitly sustained *the District Court's directive* regarding McDonald's eligibility in the 1975 election when it stated that "[t]he validity of that election is not an issue in this appeal" (App. A at 47a).

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals improperly mooted the issues on appeal, inasmuch as a case or controversy persists to date. The Decisions below violate the fundamental right of unions to administer their internal affairs as recognized by Congress and this Court.

It is manifest from the Congressional history and this Court's interpretation of the L.M.R.D.A. that Congress intended to encourage the ILA, as all unions, of its own accord to remedy as many election violations as possible without the Government's intervention, in order not only to preserve and strengthen unions as self-regulating institutions, but also to avoid unnecessary expenditure of the Secretary of Labor's resources. *Hodgson* v. *Local 6799, Steelworkers,* 403 U.S. 333, 339 (1971); *Calhoon* v. *Harvey,* 379 U.S. 134, 140 (1964); *Wirtz* v. *Local 153, Glassblowers Association,* 389 U.S. 463, 470-473 (1968). See S. Rep. No. 187, 86th Cong., 1st Sess. 21 L. Leg. Hist. 417, 2 U.S. Cong. and Admin. News 1959, 2318, at 2334, 2338. The chronology shows that the Secretary's Complaint in March, 1974, *followed* the ILA's Executive Council's investigation and final determination in the preceding month. Consistent with the District Court's determination, the post-election rights and claims under Title IV, included in the "private plaintiffs" Complaint, were within the *exclusive* authority of the Secretary to litigate, except for

their right to intervene in the Secretary's suit. *Trbovich* v. *Mine Workers,* 404 U.S. 537 (1972) (App. A at 9a).

The ILA and its Trustee, Field, did not contest the presumptive invalidity of the Trusteeship during the course of the proceedings below. Rather, within the letter and spirit of the Act, they maintained that the legitimate object of the ILA, *qua* a labor organization, was for continuation of the Trusteeship pending the outcome of a clearly valid election. The District Court itself acknowledged that the termination of the Trusteeship was contingent upon, and inextricably tied to the handing over of the reins of autonomy to duly elected officers. (App. A at 9a)

In accordance with the final sentence of 29 U.S.C. § 464(c), when the Court rendered its Decision in September, 1974, it was limited to the exercise of one of the following options: a) to dismiss the Complaints or to suspend action thereon in order to permit the ILA's second election, which it had enjoined on April 30, 1974, to go forward forthwith to completion under the Court's oversight; b) to direct and to conduct a Court-supervised election in the manner of the District Courts in *Schonfeld* v. *Raftery,* 271 F.Supp. 128 (S.D.N.Y., 1967), aff'd., 381 F.2d 446 (2nd Cir., 1967) and *Brennan* v. *United Mine Workers,* 475 F.2d 1293 (C.A.D.C., 1973), or c) to appoint a monitor to oversee the conduct of the Local's affairs, or similar "condition", pending the outcome of one of the foredescribed elections.

The District Court bypassed all of these statutorily-authorized and prescribed alternatives by countermanding the ILA's determination and turning over control of the Local to the individual Respondents. It necessarily follows that the District Court's actions mistakenly created the very situation whereby the *unsupervised* October 1975 election under the direction and supervision of persons erroneously installed by the Court in the first instance,

was permitted to occur. This Court has recognized that incumbents, in their normal self-interest, are in positions to influence the outcome of an election in which they, or those who they support, intend to be candidates for office.* *Wirtz* v. *Local 153, G.B.B.A., supra* at 475. Further tainting the election was the Court's denial of the Local's prospective right to determine McDonald's eligibility to run in the 1975 election, another off-shoot of the District Court's decree in derogation of union prerogatives. The Appellate Court specifically, but erroneously, found that this was not even an issue before it. (App. A at 47a) It is abundantly evident from the foregoing that the Court of Appeals has permitted Respondents to successfully proffer the fruits of the District Court's Order as a barrier to its review of that very Order.

The Court of Appeals engaged in an oversimplification when it equated certified elections under the supervision of District Courts with the "validation" of an election already held prior to litigation. In so doing, the Court expanded the District Court's remedial jurisdiction under Title III, without statutory warrant or legal precedent.** It plainly overlooked the exclusively Title IV rationale relied upon by the Secretary and by the District Court to seat McDonald, et al., in office, declaring it to be nothing more than a "collateral determination on the eligibility of two candidates." (App. A at 55a)

Petitioners respectfully submit that the appellate court's own rationalizations for the District Court's De-

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* Local 795's incumbent President, McDonald, was able to appoint Nominating and Election Committees; to participate in the setting up of the criteria for eligibility through the actual conduct of Local elections; and to influence voters by actions in and from positions of authority, both intra-union and in the daily work life of the Local's members, including the handling of their grievances.

** It solely relies on a District Court case, *Burch* v. *International Association of Machinists & Aerospace Workers,* 337 F.Supp. 308 (S.D.Fla., 1971), a *pre*-election, *Title I* action.

cision and Order neither cured the latter's intrinsic defects nor diminished its effects on the 1975 election. If anything, it compounded the Petitioners' dilemma. For even if this Court should find installation of the officers to have been proper, the appellate court's concurrent direct or tacit approval of the District Court's award of back pay and McDonald's eligibility in the 1975 election poured salt on the Union's wounds. Neither of those issues was collateral or requisite to termination of the Trusteeship under the provisions of Title III of the Act. Accordingly, the standards set by this Court for determination of mootness would be severely diluted, if not totally undermined, by the Decision below. *Aetna Life Insurance Co.* v. *Haworth,* 300 U.S. 227, 240-241 (1937); *United States* v. *Munsingwear, Inc.,* 340 U.S. 336 (1950).

Moreover, the Questions Presented, in the context of interpretations and erroneous implementations of the Act in question, are important not only to the ILA but to *all* parent unions whose Trusteeships and internal affairs are subject to judicial challenge. The ILA remains aggrieved by the unwarranted judicial interference with its internal procedures which the district and appellant courts ignored under circumstances not sanctioned by the Act. The Courts below have compelled the ILA, the Local's members, as well as the employers in the industry to accept, recognize and deal with officers found not to have been duly elected by the Local's membership, whose installation in office has enabled them to perpetuate their incumbency in the recent election. In *Wirtz, supra,* this Court took note that by channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization. The effects on the Union's authority and jurisdiction under its Constitution to hear and to determine protests to its election has been undermined. The Decision below undoubtedly will encourage union members to run to the

Courts for succor rather than to appropriately use available union procedures for relief.

These factors present ample justification for consideration by the Court, notwithstanding mootness. See *Brennan* v. *Silvergate District Lodge No. 50, International A. of M. and A. W.*, 503 F.2d 800 (9th Cir., 1974). The approach of the 9th Circuit appears correct and justified. We respectfully urge the Court, in view of that Circuit Court's interpretation of *Wirtz*, as well as the factors cited above on the history of the appeal, to hear and rule on the unquestionably serious and far-reaching substantive issues which have been properly raised in the course of the appellate process.

2. In the event the case is deemed to be mooted, the District Court's Order must be vacated and a new election should be directed. Portions of the Supplemental Order awarding damages and attorney fees should likewise not be permitted to stand.

Consistent with the procedures enunciated and followed by this Court (*U.S.* v. *Munsingwear, Inc.*, 340 U.S. 36, 39 (1950); *U.S.* v. *W. T. Grant Co.*, 345 U.S. 629, 632 (1953)), it has been the established practice in the Fifth Circuit and other Courts of Appeal in dealing with Civil cases which became moot in the appellate process, to reverse or to vacate the Judgments below and to remand them with directions to dismiss. See, e.g., *Parker, etc.* v. *Laundry, Dry Cleaning & Dye Houseworkers Union, Local 218, et al.*, 517 F.2d 936 (5th Cir., 1975); *Knapp* v. *Baker, etc.*, 509 F.2d 922 (5th Cir., 1975); *Westberry* v. *Gilman Paper Company, et al.*, 507 F.2d 206, 216 (5th Cir., 1975); *Merkey, et al.* v. *Board of Regents*, 493 F.2d 790 (5th Cir., 1974); *Hollon* v. *Mathis Independent School District, et al.*, 491 F.2d 92 (5th Cir., 1974); *Colpo* v. *Highway, Truck Drivers and Helpers, Local 107, Teamsters*, 305 F.2d 362, 363 (3rd Cir., 1962). In view of these precedents, the Fifth Circuit's selective treatment of the

issues raised before it on Petitioners' Appeal is novel and patently unwarranted. Its award of incidental relief was derived by resurrecting and interpreting facts in contention before the District Court which it earlier found no longer subject to litigation and by ruling against Petitioners on the very issues raised by them on Appeal. Thus, it withdrew the judicial mantle from Petitioners and then overreached in the opposite direction to extend it over the individual Respondents.

Aside from the inherent ambivalence and inconsistency in the Court's approach, there is an appearance of a dual standard of due process and protection of the laws, which should tend to offend the sensibilities of the Justices of this Court. It smacks of obvious and exceptional error. For this reason, we further urge the Court, in its supervisory role over the Federal Judiciary, to take corrective action to avoid a clearly bad precedent as well as to undo an unduly harsh impact on the Petitioners who are directly affected.* These consequences will follow if this Petition is not granted, even for the limited purpose of reversing or remanding this case for appropriate, consistent treatment of damages and fees.

Assuming, *arguendo*, that the issues of incidental relief were rendered moot, additional grounds remain for issuance of a Writ. As already noted, the Court of Appeals has permitted the District Court to exceed its authority by awarding retroactive pay to McDonald and declaring him a candidate *in futuro*, ancillary to the termination of the Trusteeship. The Courts below further erred in awarding attorney fees against the Local by misapplying the "common benefit" theory, articulated in *Mills* v. *Electric*

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* It is ILA's premise that inasmuch as its Trusteeship was improperly terminated and the 1975 election was faulted, a Court-supervised election of Local Officers should be conducted under laboratory conditions in accordance with the ILA Constitution and Local regulations.

Auto Lite, 396 U.S. 375, 392-394 (1970); *Hall* v. *Cole,* 412 U.S. 1 (1973), and other cases set forth in Appendix A at 49a-55a. Unlike Plaintiffs in the fore-cited cases, the members of Local 795 were neither directly nor indirectly benefited. To the contrary, the Order imposed upon them officers found by their own union not to have been duly elected in a clouded election. The Decision further casts a "chill" upon members who choose to vindicate *their* objections and grievances through established union procedures. It erodes the foundation of union self-government. It renders a substantial *dis*service to the union as an institution and to its members individually by creating instability, not only in local democratic processes but throughout the Union's constitutionally-established appellate processes on which they relied in good faith. It violates fundamental statutory and legal principles.*

3. The Appellate Decision further extends the award of legal fees to a situation in which a Court disagrees with the judgment of a union. This is contrary to the requirement of *Alyeska* that egregious bad faith must be shown.

The Court of Appeals has misconstrued or misconceived the "bad faith" exception to the General American Rule in making the ILA, its Trustee and Oliver, jointly and severally liable for attorney fees. *Alyeska Pipeline Service Company* v. *The Wilderness Society, et al.,* 421 U.S. 240 (1975); *McCandless* v. *Furlaud,* 296 U.S. 140 (1935). Though the Courts, as Respondents, have attributed insinuous motives to the ILA and to Field, their recitations of the facts are more indicative of neglect than of culpability. Unlike the International Union and Trustee

* It is noteworthy that nowhere in their Complaint have the individual Respondents ever sought to benefit other than themselves. They have constantly addressed their communications to the Secretary and to President Gleason in terms of acting in their own behalf.

in *Schonfeld* v. *Raftery, supra,* where the Courts found "clear and convincing" proof that neither proceeded in good faith in establishing or maintaining that Trusteeship, Field *did act* affirmatively to rectify the "cancer" that existed prior to his appointment. He acknowledged in open Court the shortcomings of his administration and admitted that he would have proceeded otherwise if he had it to do all over again. He terminated Oliver and the employees of Local 795 and took over sole control of the Union and its election procedures to avoid further claims of impropriety or undue influence in the re-run election.

Moreover, the facts herein are clearly distinguishable from the contrasting situations posed by *Vaughan* v. *Atkinson, etc., et al.,* 396 U.S. 527 (1962), *Universal Oil Products Company* v. *Root Refining Company,* 338 U.S. 575 (1945), *Bell* v. *School Board of Powhatan County,* 321 F.2d 494 (4th Cir., 1963). See *F. D. Rich Co., Inc., et al.* v. *United States for the Use of Industrial Lumber Company, Inc.,* 417 U.S. 116 (1974). The Court will realize from the Statement of the Case, *supra,* that the ILA could neither have ignored nor have rubber-stamped the protests received to the October, 1973 election. The Act recognizes the obligation of the Union in the first instance to investigate election irregularities and to resolve them. Even if it should be claimed that the ILA was dilatory in initiating its investigation, it is clear that prior to the filing of the Secretary's Complaint, *all* of the necessary proceedings envisioned by the Statute were completed in accordance with due process. The Decision to prolong the Trusteeship was not made by Field and certainly not by his agent Oliver; rather, it was by the concurrence of the District President, President Gleason and of the entire Executive Council consisting of in excess of 20 Vice Presidents throughout the Union's jurisdiction. The Decisions, as the record, are devoid of any evidence that the ILA's investigating committee or the forenoted Officials acted collusively, surreptitiously or illegally.

The disparity between the Secretary and the District Court's findings and those of the ILA does not, in and of itself, indicate the latter's error or the former's correctness. For even if the ILA's Officials were mistaken in adopting their committee's recommendations, neither statute nor precedent entitled the District Court or, for that matter, the Secretary of Labor, in a due process context, to substitute their judgment for that of the ILA. If anything, the facts tend to indicate that the ILA exercised a high degree of care under the circumstances. Had the Union summarily rejected the protests and recommendations, particularly in the context of a withdrawal of a 2½ year Trusteeship and the attendant major changes in the Seniority System, etc., the ILA and its Officials would have been subject to severe criticism and censure.

It follows that the elements necessary to establish the "overriding considerations" envisioned by this Court in *Mills* and *Hall, supra,* as well as the extreme abuses in *Yablonski* v. *United Mine Workers of America,* 466 F.2d 424 (D.C.Cir., 1972), are conspicuously absent. The awards of attorney fees ostensibly distort this Court's guidelines in *Alyeska, supra.* In view of the Fifth Circuit's misapplication of the "bad faith" exception, clarification appears necessary. *S.E.C.* v. *United Benefit Life Ins. Co.,* 387 U.S. 202, 207. Otherwise, Courts throughout the Federal system and particularly within the Fifth Circuit's jurisdiction who rely on precedent for direction and guidance, will be misled, while a gross injustice will have been done to Petitioners. This Court, in the exercise of its interpretive responsibilities, should not sanction the Decision below to rest undisturbed.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Decisions Below.

UNITED STATES DISTRICT COURT
for the Southern District of Mississippi, Southern Division

Civ. A. Nos. 73S-263 (R), S74-55 (R)

MICHAEL J. MCDONALD et al.,

Plaintiffs,

v.

HAROLD OLIVER et al.,

Defendants.

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

LOCAL UNION 795, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, et al.,

Defendants.

Decided September 26, 1974.

OPINION OF THE COURT

DAN M. RUSSELL, JR., Chief Judge.

On November 23, 1973, Michael J. McDonald and other individually named plaintiffs, claiming to be the duly elected officers of Local 795, International Longshore-

men's Association, AFL-CIO, at Gulfport, Mississippi, filed this action against Harold Oliver and other individual hold-over officers, Local 795, Fred R. Field, Jr., Trustee over the local and the ILA. Claiming jurisdiction under Titles I and III of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401, 462, 463 and 464, plaintiffs charge in Count I a conspiracy among ILA, its officers and agents, Field and Oliver to perpetuate the trusteeship over Local 795, coercing and intimidating a majority of the members and especially its duly elected officials, plaintiffs herein, and to prohibit by illegal means the installation and formal recognition of plaintiffs as the duly elected officers of Local 795 in an election held on October 6, 1973. Plaintiffs charge that the defendants individually and in concert and under the cover of the trusteeship have eliminated jobs for members not espousing defendants' views, refused payment of dues by members who chose to run for office against the trusteeship regime, refused work to members who opposed the corrupt practices of the trusteeship, and redrafted rules and regulations so as to destroy any semblance of democratic government or fair dealing within the local union. Plaintiffs allege that any exhaustion of intraunion remedies required decisions by those already committing wrongs and illegal acts and served only to perpetuate and compound the inequities. In Count II, plaintiffs allege that on May 1, 1971, Local 795 was placed in trusteeship. In a trustee's report to the Department of Labor under date of October 31, 1972, a copy being attached to the complaint, the report reflects that the trusteeship resulted from charges brought by a majority of the elected officials and more than 100 members of Local 795, the charges including but not limited to: (a) the president of the local (Oliver) solicited new members into the local and industry when there was insufficient work available; (b) the president

(Oliver), by controlling the appointment of foremen, controlled the hiring practices of a company with which the local had a contract to the detriment of older members with seniority in favor of new men in the industry; (c) upon complaints to management that the foremen were ignoring seniority, management stated that it had nothing to do with the hiring of foremen; (d) the president (Oliver), in collusion with management, usurped the right of all other officers and members of the local to bargain collectively; and (e) the president (Oliver) failed and refused to seek arbitration of grievances as provided for in the collective bargaining agreement after being requested to do so by members or other officers of the local. This report also shows that a committee appointed by the Executive Board of ILA recommended that the local be placed in trusteeship, finding that (a) the president (Oliver) never had any intention of implementing the seniority provisions of the agreement; (b) the superintendents and supervisors were selecting employees without regard to seniority; and (c) the president (Oliver) appointed supervisors to head election committees to maintain control over the local; and, finally, the report shows that the committee's recommendation was adopted by the ILA Executive Council, the trusteeship having been established on May 1, 1971. The complaint alleges that the charges have not been remedied during the course of the trusteeship, but to the contrary have multiplied in that the trustee, defendant Field, appointed defendant Oliver to act as president and as his agent throughout the trusteeship, and that they have furthered and compounded the grievances resulting in the trusteeship. Plaintiffs charge that the continued existence of the trusteeship is in violation of Section 461 et seq. of 29 U.S.C. and is for the sole purpose of continuing in office those whom the trusteeship should have eliminated. Plaintiffs also aver that they

were individually elected to the offices of the local and have sought to perform their duties, but have been unlawfully denied their right to do so by the actions of the defendants, and that the defendants, under the guise of the trusteeship, its cessation being long overdue, have usurped the powers, rights and privileges guaranteed to plaintiffs and other members of Local 795 by the constitution of the defendant International and the laws of the United States. In Count III of the complaint, plaintiffs charge that Oliver, individually and as agent of the trustee, in an effort to eliminate competition in union elections, illegally and in an undemocratic way sought to change the constitution and by-laws of the local union on July 7, 1973, a short while before an election of officers was scheduled to bring an end to the trusteeship.

For relief, plaintiffs, among other things, asked for a temporary order restraining defendants from interfering with plaintiffs' rights to hold office, for preliminary and permanent injunctive and declaratory relief dissolving the trusteeship, preserving union assets and records, declaring the election of October 6, 1973, valid, and for reimbursement of all salaries and expenses improperly incurred during the trusteeship.

At an early hearing, the Court denied plaintiffs' motion for a temporary restraining order and set the matter for a trial on the merits beginning January 15, 1974, meanwhile urging the parties to try to resolve their differences through union procedures. Prior to the scheduled hearing, the trustee, Local 795 and ILA filed a motion to dismiss on the grounds that plaintiffs had failed to exhaust their internal union remedies, and that plaintiffs were not proper parties in that their remedy is within the exclusive jurisdiction of the Secretary of Labor. In their answer, defendants admitted the jurisdiction of the Court under Title I but denied jurisdiction under Title III as to all allegations concern-

ing the trusteeship, and, as to all allegations concerning the election (Title IV), again pled that the Secretary of Labor had exclusive authorization to initiate legal action. Affirmatively, defendants pled that a committee had been appointed to investigate plaintiffs' complaints, including the validity of the election of October 6, 1973, and to report its findings to ILA's President and Executive Council; and that it was conceivable that the report could contain findings and recommendations for relief equivalent to that sought by plaintiffs. Defendants amended their answer to plead that all plaintiffs' allegations pertaining to their denial of employment are exclusively within the jurisdiction of the National Labor Relations Board which had previously ruled against McDonald on such charges. Defendants further pled that the ILA investigation of the October 6, 1973, election shows that it should be set aside on the grounds that McDonald and E. J. Lebeau were not qualified nominees for elective office, ineligible members voted, and observers were not permitted to observe within the polls.

The hearing began as scheduled, with the Court finding that it had jurisdiction under Title I as it pertains to union members' voting rights and under Title III inasmuch as Section 464(a), 29 U.S.C., specifically provides that a member may bring an action under Title III. The Court heard numerous witnesses for plaintiffs and received documentary evidence before recessing the cause to June 11, 1974.

On March 25, 1974, the Secretary of Labor filed his action, styled and numbered above, against Local 795 and ILA, invoking jurisdiction under Title IV, Section 482(b), 29 U.S.C. The Secretary alleged that Michael J. McDonald, plaintiff in Cause No. 73S-263(R), and a member in good standing of Local 795, by a letter of October 22, 1973, addressed to Thomas W. Gleason, ILA president, protested

the ILA's failure to install the officers duly elected on October 6, 1973; that Gleason acknowledged McDonald's protest by letter of October 24, 1974, advising that an investigation of the matter would be made. On January 17, 1974, McDonald and others appealed from the findings of the committee appointed to investigate, and have invoked all available remedies without obtaining a final union decision within three months. Pursuant to Section 482(a)(2), 29 U.S.C., McDonald and others filed a complaint with the Secretary. Pursuant to 29 U.S.C., Section 521 and in accordance with 29 U.S.C., Section 482(b), the Secretary investigated and found probable cause to believe that Section 481(e) was violated in that the defendants denied members in good standing the right to hold office through defendants' failure to install the officers elected on October 6, 1973, and that said violation may have effected the outcome of the election. The Secretary, for a second cause of action relating to Title III, alleged that the ILA imposed trusteeship has continued far beyond its eighteen months' presumed validity; that by letter of February 16, 1973, members of the local had complained to the Secretary that the trusteeship should be dissolved; that the Secretary has investigated and found probable cause to believe that a violation of Title III has occurred and has not been remedied in that a continuation of the trusteeship is not necessary for a purpose allowable under Section 462, 29 U.S.C.

On April 29, 1974, the Court granted the motion of plaintiffs in Cause No. 73S-263(R) to consolidate the two actions, and denied defendants' motion to dismiss the private action on the grounds that the Secretary's action was exclusive. On April 30, 1973, the Court granted the Secretary's motion restraining defendants from conducting a new election scheduled by defendants for May 25, 1974, but denied the Secretary's motion for a preliminary injunc-

tion for the immediate installation of the officers who won at the October 6, 1973 elections until the Court had had an opportunity to hear all of the evidence.

In their answer to the Secretary's complaint, the defendants denied all material allegations and affirmatively pled that Local 795 is not a proper party defendant in that its authority has been superseded by the imposition of the trusteeship; that the Secretary has no authority under Title IV to seek the installation of officers; that as a result of protests filed to the validity of the election of October 6, 1973, said protests were investigated, and as a result ILA found that the election was invalid; ILA ordered the continuation of the trusteeship pending a new election; and that the Secretary and private plaintiffs were advised of these matters.

Following the January, 1974 hearing, this Court held additional hearings of several days each in June and July, 1974 until all parties had completed their evidence. Plaintiffs were allowed to amend their complaint by alleging that they had exhausted all union remedies prior to their charges of violations of Titles I, III and IV. The Secretary renewed his motion for an immediate installation of officers, and defendants renewed their motion to dismiss on the grounds that the Secretary has no authority to seek the installation of officers, his authority being limited only to the investigation of an election as to which protests have been filed. The Court reserved ruling on both motions. Meanwhile, defendants agreed to hold the new election they had ordered in abeyance pending this Court's decision.

The Court is persuaded that the private plaintiffs have exhausted their union remedies, to no avail, on their allegations and proof of violations of Titles I and III. There is evidence that numerous complaints were made of denials of job opportunities and the failure of defendants to

recognize plaintiffs' voting rights by voiding the October 6, 1973, election, and to the continuance of the trusteeship. There is also evidence that during the trusteeship, complaints made directly to the ILA president were referred both to Field and Oliver for disposition, the very persons against whom the complaints were made. It is accepted law that ". . . . where there is reason to believe that resort to an appeal within the union would be futile it is not necessary to follow such a course as a prerequisite to legal action." See *Libutti* v. *DiBrizzi,* D.C., 233 F. Supp. 924, wherein the above was quoted from *Farowitz* v. *Associated Musicians of Greater New York,* 2 Cir., 330 F.2d 999; also see *Calagaz* v. *Calhoon,* 5 Cir., 309 F.2d 248; and *Schonfeld* v. *Rafferty,* 2 Cir., 381 F.2d 446, affirming D.C., 271 F. Supp. 128. *Libutti* is also authority for private plaintiffs' contention under Title I that the voiding of the election by ILA and Field is an infringement of plaintiffs' rights as union members to nominate and vote for qualified candidates. Also, see *Mamula* v. *Local 1211,* D.C., 202 F.Supp. 348, rev. 3 Cir., 304 F.2d 108, wherein the lower Court said: "To bar a union member from holding office if nominated and elected is an unequivocal interference with rights of a union member, which must invoke the provisions of the Act as they relate to union members." This Court is aware of the holding in *Calhoon* v. *Harvey,* 379 U.S. 134, 85 S.Ct. 292, 13 L.Ed.2d 190, wherein the allegation of union members that eligibility requirements deprived them of the right to nominate candidates, was dismissed as not within the limited scope of Title I, and that this decision followed *Libutti* and *Mamula.* However, the allegations in the case sub judice are much broader in scope than the relief sought by individual plaintiffs in *Libutti, Mamula* and *Calhoon.* Here, although the named plaintiffs are officers claiming the right to be seated, they sue on behalf of not only themselves as union members, but on behalf of a majority of the union members whose votes were nullified by the actions of defendants. Further, defendants not only concede that the end of the trusteeship under Title III is overdue, but concede jurisdiction under Title I. All parties and the Court agree on the futility of dissolving the trusteeship until such time as there are properly elected officers to take over management of the union. The Court has no hesitancy, therefore, in finding that it has jurisdiction over the Title I and Title III allegations of both private plaintiffs and the governnment.

On the other hand, it is equally clear that private plaintiffs' rights under Title IV are within the exclusive authority of the Secretary to litigate except for the holding in *Trbovich* v. *Mine Workers,* 404 U.S. 528, 537, 92 S.Ct. 630, 30 L.Ed.2d 686. In that case involving a suit by the Secretary to set aside an election, and, where private plaintiffs sought to intervene in order to set forth additional grounds for voiding the election, Justice Marshall found nothing in the legislative history of Title IV or in the Act itself to bar intervention by a union member so long as his claims were limited to those presented by the Secretary. Therefore, if the Secretary has a right to his claim under Title IV, plaintiffs were properly allowed to amend their declaration in the consolidated suits by alleging the same grounds as the Secretary for relief under Title IV: that is, the installation of validly elected officers.

Although the Secretary in his Title IV count has not pled a run of the mill action challenging an election, he does maintain that defendants' action in voiding the election of October 6, 1973, is a violation of Title IV in that members in good standing (private plaintiffs) who were the winners of the election, have been denied the right to hold office contrary to the intent and meaning of Section 481(e), 29 U.S.C. The Court agrees. However, in order

to do so, and before considering the evidence as presented, the Court finds that, if the election of October 6, 1973, was valid, then the setting aside of this election by the defendants and their ordering of a new election under conditions and qualifications set by the ILA and Local 795 may indeed "affect the outcome of an election." See *Wirtz* v. *Teamsters Industrial & Allied Emp. U. Local No. 73,* D.C., 257 F.Supp. 784. The Court further finds that it is not required to order a new election, but, may under Title I and its own inherent equity powers, validate the October, 1973 election if it in turn is found to have been valid.

The evidence in this case presents two sharply disputed issues: (1) whether or not plaintiff McDonald was an eligible candidate for office, and (2) whether the October 6, 1973 election was in all other respects valid. The Court has reviewed all of the testimony and exhibits and limits its findings to such evidence as pertains to these two issues, first giving a resume of the evidence leading up to the trusteeship and highlighting Field's testimony pertaining to the trusteeship.

In 1958 three separate trust funds were established and evidenced by agreements titled "Pension Plan and Trust," "Welfare Plan and Trust" and "Vacation Plan and Trust," executed by Local 795, whose membership is white, and Local 1303, International Longshoremen's Association, AFL-CIO, whose membership is black, on behalf of both union memberships, and by Ryan Stevedoring Company, and Walsh Stevedoring Company, Inc., the employers. These plans were established as provided for in collective bargaining agreements for the benefit of union members with all funds being contributed to by the employer. The plans provide for the appointment of four trustees with full management powers, one representing each local, and one representing each of the above em-

ployers and an administrator of the funds, the trustee's terms being for one year. In 1970, Sealand Terminal Corporation became an employer under the bargaining contract but, in the absence of representation on the Board of Trustees of the plans, refused to contribute thereto. Instead, Special Account No. 051-863-8 was established in a local bank on which Harold C. Oliver[1] and Wilson Evans II, presidents of the locals and trustees of the plans, respectively, and Captain Thomas P. Toomey, a vice-president of Sealand, were authorized to withdraw funds. Rivalry between defendant Oliver and plaintiff, McDonald, as far as this record shows, began in November, 1970 when McDonald defeated Oliver in Local 795's election for trustee of the funds. At that time and until after the union trusteeship was imposed, Oliver, in addition to his salary as president of Local 795 and other emoluments, was paid the sum of $220.00 per week to handle claims under the plans, plus expenses, as was also Evans, these amounts being paid from plan funds from October 1, 1970, until Field stopped this practice during the trusteeship. McDonald in his testimony said that after becoming a trustee of the plans he tried to find out, among other things, why the contributions of Sealand, then and now the largest contributor, were in a special account, drawing no interest,[2] and why some claims against the plans were not being processed. McDonald also admitted that he questioned some of Oliver's items of expense and refused to sign checks in payment of them. The affairs of the union reached such a stage in the latter part of 1970 that members of the union, including some

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[1] Oliver was elected president of Local 795 in 1962, continuing in that office until removed by Field in February, 1974.

[2] Although McDonald had been elected a trustee, he apparently had no control over the special account, Oliver retaining his authority along with Evans and Toomey to make withdrawals.

of the plaintiffs here, directed a "Bill of Particulars," to the ILA Executive Council outlining lengthy charges against Oliver, a copy being in evidence as plaintiffs' Exhibit 4. On December 9, 1970, the same union members directed a request to Gleason, ILA president, asking him to invoke a trusteeship over Local 795. This request was accompanied by formal charges against Oliver registered with the local's recording secretary, with copies going to district and international officers, and was further accompanied by a list of 103 signatures of union members joining in the complaints against Oliver. Gleason informed Oliver of the charges and of a hearing to be held on the charges on January 21, 1971. As a result of these charges and the hearing, a trusteeship was invoked, effective May 1, 1971.

Fred R. Field, Jr., general organizer for ILA, was appointed trustee over Local 795 by ILA president Gleason. Field is also on the ILA executive council, holding many other offices at the district and international levels. As organizer, Field represents ILA along the eastern and southern shores of the United States, in Canada, South America, the Dominican Republic, Nassau, parts of South and Central America and Puerto Rico. He is president of the International Banana Handlers Council, controlling all local unions that handle bananas. He is a member of the ILA contract board which negotiates bargaining contracts throughout the country. He is a busy union man, and admittedly spent little time on the trusteeship in Gulfport. He testified at length. Inasmuch as plaintiffs and defendants admit that the end of the trusteeship is long overdue, it is unnecessary to detail his testimony concerning his service as trustee except to refer to pertinent admissions. He received no salary as trustee, but his expenses for his trips from his residence and office in New York City to Gulfport and return were borne by the local. Upon his

appointment, he did not remove Oliver and the other local union officers from office, and admitted he was criticized heavily for his failure to do so. He directed Oliver to take charge of all union records, check books, receipt books, minutes, etc., to secure them, to change the locks of the union hall and allow no one in but Oliver and his secretary. He professed not to know how Oliver carried this out. He was familiar with the "bill of particulars" and other charges filed against Oliver heard by an ILA committee which recommended the trusteeship. As a member of the ILA executive council he voted for the trusteeship and was appointed as trustee by Gleason who instructed him to take possession of all of the local's records, remove such local officials as he deemed necessary, correct the trust fund abuses, and to remedy the charges against Oliver. Instead, he turned the records over to Oliver. He removed McDonald as trustee of the pension, welfare and vacation plans, as having "no clout" and substituted himself, admitting that he took McDonald's place to effectuate the changes McDonald was urging. He acknowledged that Oliver drank heavly and was in trouble with respect to the trust funds. He admitted that he did not instigate a union seniority plan until late 1973. He admitted that he had not attended a local union meeting during the trusteeship, his only attendance in Gulfport being at meetings of the trustees of the plans, and in negotiating bargaining contracts, and that he ultimately named Oliver as his alternate at the trustee meetings. He admitted that he sent Oliver to union meetings and conventions as an observer at the local's expense. He acknowledged that he knew in 1971 that the companies owed the trust plans over $500,000.00, and that in September, 1972 the amount had increased to $658,000.00, exclusive of the special account maintained by Sealand. He said that by virtue of the collective bargaining agreement of 1972 that Sealand became a party to it, and the special account was transferred to the

union's trust funds. As of 1973, he was unaware of any sums due and owing the trust fund except for current obligations. He assumed the administrator of the funds would know, saying it was the duty of the administrator to collect the funds. He admitted that he had not advised litigation to collect any sums due and owing, and, as of the date of his testimony, he did not believe suit was necessary. He claimed credit for stopping the monthly payments from trust funds to Oliver and Wilson Evans for handling claims, and he admitted he had raised Oliver's union salary from $325.00 to $375.00 a month, but thought it had been cut back. He admitted that the seniority plan had not been effected, but promised that it would be, and that it would be integrated with the black local union. He admitted that the charges by union members that they could not get work would have been solved with an effective seniority plan, and admitted that Local 795 through Oliver refused to cooperate. He admitted that in February, 1974 he formally removed all hold-over officers from office and appointed Oliver as his clerk under instructions to take orders only from Field himself. He admitted that he cancelled the installation of the officers elected in October, 1973. Of particular note, by originally retaining the same local officers, Field said he hoped that they could solve the local problems under his direction, but he admitted his plan had failed.

McDonald's Eligibility for Office

A dispute arose during the trial as to which constitution and by-laws govern eligibility of union members to run for office. The local's 1959 constitution and by-laws contained no eligibility requirements for holding office, in the absence of which defendants concede that the ILA constitution and by-laws would prevail. That constitution and by-laws adopted at Miami Beach, Florida on July 19-22, 1971, ap-

proved by the Executive Council on February 11, 1972, provides in Article XIII that each local union shall elect by secret ballot among its members in good standing, a president, a vice-president, a recording secretary, a financial secretary or treasurer, an auditing committee, an executive board and such other officers and committees as the local union may deem necessary for the conduct of its affairs, for a term of two years. It further provides that subject to such other reasonable eligibility requirements as a local union may impose, no person shall be eligible for office unless he has been a member in good standing for at least one year preceding the date of his nomination and *working or seeking work,* at the trade or craft covered by such local union or employed by the local, except that the local union in its by-laws may provide for longer periods of eligibility up to but no more than three years. The preceding ILA constitution and by-laws of 1963 contained similar provisions. As stated above, the 1959 local's constitution and by-laws contained no eligibility requirements for holding office; nor did it provide for how long officers should serve. At the time of the trusteeship, the local union was operating under the 1959 constitution and by-laws. Terms of office were for three years, this apparently being provided for by the union's minutes or custom and practice. On June 28, 1973, Field, in a report of his trusteeship to the local union and its members, stated, among other things that he was arranging for printed copies of the May, 1972 bargaining agreement, the seniority plan, the debiting system for GAI Fund (not otherwise identified) and the constitution and by-laws of Local 795 to be mailed to every member. He also set up a schedule for a membership meeting on July 7, 1973, at which time the seniority plan would be explained; distribution of seniority cards on August 4, 1973; the implementation of the seniority plan by August 13, 1973; the nomination of officers on

September 1, 1973; election of officers on October 6, 1973; and installation of officers on November 3, 1973. The evidence through numerous witnesses is that Oliver called for a membership meeting on July 7, 1973, not to explain a seniority plan as outlined in Field's letter, but for the membership to adopt a new constitution and by-laws—this with no prior notice and with no copies having been furnished the members. The proposed constitution and by-laws were read and moved for adoption with no questions or discussion allowed. According to the first vote, by a show of hands, passage failed. Oliver ordered a second vote, with members voting for passage on one side of the union hall, and those opposed on the other side of the hall. On this vote, approval was declared. This undated constitution and by-laws, a copy being in evidence as plaintiffs' Exhibit 9, provides that no member shall be eligible for election to any office unless he has been a member in good standing for *at least three years.* Prior to the end of the trial, defendants conceded that this constitution and by-laws were void and ineffective inasmuch as such had not received the required approval of the ILA Executive Council. At the membership meeting of September 1, 1973, for the nomination of officers, a transcript of same being in evidence as defendants' Exhibit 17, although Oliver made no attempt to qualify or limit the nominees, it is of record herein and obvious to the Court that defendants, through Oliver and Field, used this means to discourage votes for McDonald in the ensuing election, and, when McDonald won anyhow, used McDonald's purported lack of qualifications as a protest following the election. Although McDonald's protest of Field's failure to install the winning candidates was acknowlged by Gleason, it is also clear to this Court that Gleason appointed a three-member committee to hold hearings in Gulfport during the month of January, 1974 on the

basis of protests to the election engineered by Oliver and that this committee largely based its recommendation for a new election on its finding that McDonald was ineligible under the 1973 constitution and by-laws which defendants now admit was void. A transcript of this hearing is in evidence as defendants' Exhibit 30. As alleged in defendants' amended answer, cited above, the committee appointed by Gleason to hear protests to the election recommended that the election be set aside on the grounds that McDonald and LeBeau were not qualified to run for office, ineligible members voted, and observers were not permitted to observe within the polls. LeBeau's qualifications were challenged on the ground that he was alleged to be a supervisor in the employ of Sealand at the time of the election in violation of the 1973 ILA constitution and by-laws which prohibited his candidacy. In the Secretary's investigation dealt with later herein, this charge was found to be untrue, the Secretary's investigation having verified that LeBeau resigned from his supervisory position several weeks prior to the election.

As to the eligibility of McDonald, he testified that his job on the dock, that of a car sealer, was phased out in 1971. His testimony, supported by that of other plaintiffs' witnesses, was that thereafter, despite his reporting to the dock for "shape-ups," defendant Oliver, through threats made to the various foremen, saw to it that McDonald was "left on the hill," i.e., that he was not picked up on any gangs working at the docks. McDonald conceded that in 1972 and 1973 he was employed by the Board of Supervisors of Harrison County, Mississippi, in District Three, as a means of livelihood for himself and family, but that he nonetheless during the year prior to the October 6, 1973, election repeatedly reported to the docks and was refused work. He also stated that it was not unusual for members of the local to work on the dock and hold a job with the

county. Defendants' witness, Leonard Winstead, a timekeeper for District Three, stated that McDonald was foreman of a work gang on county roads in 1972, paid by the month; that after the union election in October, 1973, McDonald was relieved of his job as foreman and assigned with another man to duty on county bridges where they could work out their own schedule. Winstead acknowledged that McDonald checked in with him in the mornings, usually by telephone, and thereafter Winstead did not necessarily know where McDonald was. He knew that McDonald previously had worked on the pier and said it was not unusual for county workers to also work on the pier. Raymond Bricknell, with 32 years' experience working on the pier and a member of Local 795, testified that he formerly was foreman of a gang; that McDonald was then working a heavy shift, shoveling bauxite from the hold of ships; that Oliver requested him not to work McDonald, and when he, Bricknell, refused to fire McDonald, Bricknell's gang was laid off for five weeks. Ronald W. Foley, a member of Local 795 for 13 to 14 years, has been a foreman during 1971, 1972 and 1973. He testified that when McDonald's job as a car sealer was phased out, Oliver told the witness not to hire McDonald saying he, Oliver, did not want any foremen to hire McDonald. Thereafter Foley only hired McDonald in his gang when he was short of men. Foley said that Oliver named numerous others that he did not want Foley to give work to, being those who did not support Oliver, and that he, Foley, took Oliver's remarks as a threat to his own job and that Oliver said he had more power under the trustee than when he was president. Since the election, Foley stated that men who did not support Oliver were laid off. Lawson Schmitt, a member of Local 795 for 12 years, is a head supervisor on the docks. He stated that Oliver had not directly told him not to hire McDonald, but that he got "the word" through Sea-

land's superintendent and assistant superintendent. It would make this opinion unnecessarily long to note the testimony of all plaintiffs' witnesses who said that McDouald did report for "shape-ups" at the dock and defendants' witnesses who said they had not seen him there. The Court does, however, note the testimony and conclusion of the Secretary's investigator.

Mr. Thomas W. Sutton, a compliance officer with the Department of Labor for 14 years, testified that he was assigned to investigate the trusteeship imposed on Local 795 and to investigate plaintiffs' protest that they were denied office after having won in the October, 1973 election. Sutton said he first came to Gulfport following a complaint of February 16, 1973, directed to the trusteeship. At the conclusion of his investigation, no action was taken by the Secretary on ILA's representation of July 28, 1973, that the trusteeship would end following a new election. After plaintiffs' complaints to the Secretary of January 24 and February 6, 1974, that defendants had refused to install the winning candidates, Sutton immediately returned to Gulfport to investigate the circumstances surrounding the election. He went first to Oliver and conducted interviews with Oliver,[3] union members referred to him by Oliver, the newly elected officers and other union members. He specifically made himself available to any and all members. He examined ILA and local constitutions and by-laws. He relied on Oliver's statement that the 1959 local constitution and by-laws were in effect, but, as they contained no provisions for eligibility for office, Sutton concluded that the 1973 ILA constitution and by-laws would control.[4] With particular reference to McDonald's eligibility, Sutton

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[3] Oliver, through counsel, refused to give Sutton a written statement.

[4] Oliver had by then been convinced by counsel that the July 7, 1973, constitution and by-laws were void.

determined from the receipt books that McDonald's dues were paid up to date and from his numerous interviews with union members that McDonald had indeed diligently sought work as a longshoreman within a year prior to his nomination as president and that he was eligible for nomination. The Court has considered all the testimony and evidence pertaining to McDonald's eligibility and agrees with the government's investigator that McDonald was for years a full time employee as a longshoreman on the docks; that in 1971 his permanent job was phased out; that thereafter he worked or sought work as a longshoreman; that defendant Oliver was primarily responsible for his lack of work; that McDonald, for a livelihood, was compelled to seek other work during the year prior to his nomination, notwithstanding which he still went to the docks during that period seeking work; that he was otherwise a member of the local union in good standing with paid up dues.

Validity of the Election Otherwise

In accordance with Field's time schedule, and a separate letter of August 15, 1973, from Field to the local membership both in evidence, a meeting was called for September 1, 1973, for the purpose of nominating candidates for the election to be held on October 6, 1973. Candidates were nominated as reflected by minutes of the recording secretary, Richard Clark, government's Exhibit 3, and by a transcript of the meeting, defendants' Exhibit 17. As reflected by the latter, Oliver announced that each candidate would receive a list of eligible voters prepared by Charles Logan, Richard Clark and Mrs. Bradley,[5] and that an ILA

[5] Elsewhere in this case, Logan has been identified as the Certified Public Accountant regularly employed by the local union, Richard Clark as recording-secretary, and Mrs. Bradley as the office secretary.

committee would pass on the candidate's qualifications. Oliver temporarily turned the meeting over to Monroe Kimball, chairman of the election committee, who identified other members of the committee, all appointed by Oliver, and Kimball read the voting rules adopted by the committee, a copy of which is in evidence as plaintiffs' Exhibit 16. One of these rules provided that only members in good standing as of September 1, 1973, would be qualified to vote. Another provided that each candidate would be allowed one poll attendant, the attendant to be seated during the counting of the vote. Oliver testified that customarily the recording secretary compiled a list of the members eligible to vote, after checking same against dues receipts. Clark testified that he attempted to prepare such a list as best he could because Oliver had taken all his records and had them locked up. Oliver at first denied this and later, when on the stand for the second time, admitted that he had deprived Clark of the records except for one day, September 1, 1973. A copy of the list prepared by Clark, defendants' Exhibit 8, listing 374 members, was handed out by Oliver to each candidate several days prior to the election. Oliver also testified that he was instructed by Field to have the accountant prepare a list, defendants' Exhibit 9. This list, dated September 28, 1973, was not furnished the candidates, but was used in the election. It contains 375 names, the first name, that of Thomas Achee, not having been on Clark's list; otherwise the names are identical. On his list, the accountant noted 12 members receiving retirement benefits who paid no dues, 23 members who were listed by the local as injured, and who were behind in the payment of dues, and 10 otherwise active members whose dues were not paid. He also placed asterisks by the names of 53 members whose dues were not deposited until September 24, 1973. Clark testified at length as to this last group saying that these were members who

paid their dues to him during August, 1973, either at the union hall or while he was at home recuperating from hospitalization, at a time when he was denied use of the dues receipt books by Oliver; that he made notes of those who paid and ultimately deposited the funds in the union account as was recognized by the accountant. There is no dispute among any of the witnesses that retirees had always voted without payment of dues and that they were eligible. At the time the election committee met on September 22, 1973, the committee having before it Clark's list, and its own minutes, government's Exhibit 4, reflect that the committee agreed that all retired members could vote. As to those on the injured list, the committee chairman, Kimball, defendants' witness, testified that there were more of these names than usual, and, in an attempt to be fair, the committee, as shown by the minutes, determined that the injured members would be notified by registered mail that they would have until September 28, 1973, to bring their dues up to date. For all others the cut-off date would be September 1, 1973. Kimball testified that the committee felt that if it was wrong in allowing injured members to pay by September 28, 1973, and thereby be eligible to vote, then the ILA officials who were to conduct the election could say so. This committee also noted in its minutes that Thomas Achee should have been included as an eligible voter, as he was on the accountant's list.

Despite Oliver's promises that an ILA committee would pass on the candidates' qualifications before the election, two executive board members, one retired, of the South Atlantic & Gulf Coast District of ILA were instructed to observe the election. Both testified, being Ewell St. Amant, a former president of an ILA local union in New Orleans, Louisiana, as well as a former member of the district executive board, with previous experience in observing union elections, and E. R. Dennies, who succeeded him in both

offices. They arrived in Gulfport early before the election and met with the election committee, the nominees and members. St. Amant said that he asked if there were any objections to the accountant's voter list and there were none. He received no protests during the election or afterwards, saying that he received numerous compliments that the election was fair in every respect. He confirmed that the candidate's attendants or observers were asked to leave the hall during the voting, but that all were invited in for the counting in accordance with the election committee's voting rules. None protested. He and Dennies reported the winning candidates to Oliver and to the president of the district council, Ralph A. Massey, who had instructed them to observe the election. Dennies, also with experience in observing elections, said he was furnished the accountant's eligibility list and the election committee's rules. The committee chairman, because there were so many observers, asked Dennies to remove the observers from the polling area and he did. The observers were present for the counting. He admitted that some voters protested the removal, but none of the candidates did. There were two challenged ballots which were sealed and remained in his possession still sealed until he returned them to Oliver in Gulfport. He had never seen Field and thought Oliver was the trustee.

Sutton, the government investigator, testified as to his investigation of the election. In addition to examining the various constitutions and by-laws as to which he said Oliver told him the local's constitution and by-laws adopted in July, 1973 controlled and later admitted they did not, Sutton called upon Oliver for all records pertaining to the election. They were locked in the ballot box which had to be broken open, no one apparently having a key, including Oliver. Sutton said that 400 ballots were printed, and of the 375 names on the accountant's list, 319 ballots were

counted, 2 were challenged, and 79 were unused. He compared Clark's voter eligibility list with that of the accountant and found only the omission of the name of Achee from Clark's list. He said the 1959 local constitution and by-laws contained no provision as to the eligibility of retirees, sick and injured to vote, but he confirmed that retirees customarily had been allowed to vote. He compared the accountant's eligibility list with the list of voters receiving ballots, defendants' Exhibit 10, and said of the 12 retirees, 9 voted. Of the 23 on the injured list, 8 responded to the notice of the election committee by paying their dues, 7 of these casting ballots. He interviewed Richard Clark at length, checking late deposits against dues receipts, and satisfying himself that all deposits after September 1, 1973, represented dues paid before that date. In the records Sutton examined were the two challenged votes, still sealed. By comparing the numbers on the outside of the envelopes with the same numbers on the list of those who received ballots, he determined the identity of those casting the challenged ballots. He interviewed both and subsequently found that one was eligible to vote and the other not. He stated that the eligible vote would not have changed the election of any officer. Sutton in the presence of Oliver, Oliver's attorney, McDonald and several other union members re-counted the ballots. The totals shown as added to Richard Clark's minutes of the meeting when candidates were nominated, as compared with Sutton's re-count, showed different totals in some instances, but in no case did the variance change the result of the election. The results according to Clark's tabulations and those of Sutton's re-count are shown in the following columns:

	Clark's Minutes	Sutton's Re-Count
President		
Harold Oliver	115	115
•Michael McDonald	136	136
E. J. LeBeau	66	66
A. A. (Ace) Cunningham	2	2
Vice President:		
Ed Scarborough	83	82
Ivy P. Hebert	17	17
Ronald H. Bentz	51	52
•Eugene Ladner	115	116
Herman Clark	47	49
Secretary-Treasuer:		
Paul E. Bergeron	70	70
Rudolph Tillman	113	113
•Norman J. Ladner	115	115
Lewis Garlotte, Jr.	17	19
#Chris Hyden		1
Recording Secretary:		
•Richard Clark	212	212
Everett Necaise	100	100
#Chris Hyden		1
Sergeant-at-Arms:		
Ed C. (Jack) Perrone	94	94
Dale Paige	72	92
•Tony Lamberg	108	124
Trustees (Three)[a]		
Raymond Lizana	91	91
Felix Brown	27	27
Fred T. Ladner	68	68
•Elmer Ford	109	109
Lynn E. Bangs	87	87
Ronald (Dinky) Davion	59	58
Homer (Gobbler) Vogle	93	95
John (Hamhock) Coleman	51	50
E. N. Welch	32	32
•Bernie Ray Saucier	101	101
•Eugene Niolet	151	151
E. J. LeBeau (withdrew)		

• Indicates winners.

Was not nominated but had a vote cast for him.

[a] These trustees are the executive board of the local and are not the trustees of the three trust plans, whose election is separate, or supposed to be.

From the various interviews with and statements taken from union members who supported Oliver and those who supported McDonald, Sutton found that no protests were made about observers being asked to leave the voting area during the balloting until well after the votes had been counted, when observers were present. He acknowledged that the removal during voting may have been a technical violation of the Labor-Management Reporting and Disclosure Act, but that such did not affect the tally. All were asked to leave indiscriminately, and none protested before the election. Sutton stated that Field said it was customary for retirees and the disabled to vote without paying any dues, and, in any case, Sutton found that the seven votes cast by those on the injured list would not have changed McDonald's victory over Oliver.

The Court has carefully reviewed all the live and documentary evidence concerning the election, and finds that Michael McDonald was an eligible candidate. His dues were paid up, and the evidence was convincing that within a year of his nomination he had sought work in the trade despite Oliver's successful attempts to block his employment. The Court finds that the finding by the ILA executive committee which met in Gulfport on January 9, 1973, that McDonald was not eligible, if based on the qualifications set out in the subsequently admitted, void, local constitution and by-laws of 1973, was in error. This committee's finding that LeBeau was a supervisory employee and therefore ineligible was also in error, as evidence before this Court shows that he resigned his supervisory job weeks before the nominations. The Court further finds that defendants' objections to the election on the grounds that observers were not allowed in the voting area while the voting was taking place, and the fact that seven members on the injured list, whose dues were not paid until September 28, 1973, were allowed to

vote, are not well founded. The seating of the observers during the counting of the ballots was in full compliance with the voting rules which were read to the membership meeting of September 1, 1973. No objection was made thereto until after the voting took place on October 6, 1973. The Court finds that the rule was exercised indiscriminatorily and did not affect the outcome of the election. The Court finds that the action of the election committee in giving those on the injured list extra time in which to pay their dues before the election was known to Oliver and other candidates, none of whom made any objection thereto, and was in reality a concerned effort on the part of the election committee to have a fair election; and further finds that the seven who voted, even if their ballots were cast for a losing candidate, could have affected no office but that of secretary-treasurer and sergeant-at-arms, the losers of which made no objection appearing in this record. There is a stipulation of record that, as to the election of Norman J. Ladner, elected Secretary-Treasurer, Tony Lamberg, elected Sergeant-at-Arms, and Elmer Ford, elected trustee, there were no protests at all.

The Court has given due consideration to defendants' alternative request for a new election conducted under the auspices of the Secretary of Labor, and finds that such would now be fraught with obstacles in determining of voter eligibility in a new election, and would clearly be prejudicial to the candidates who won in the October 6, 1973, election.

The Court therefore validates the election of October 6, 1973 and directs that the winning candidates be forthwith installed. The Court specially finds that the 1973 ILA constitution and by-laws applied to the election, and therefore the terms of office should be, and are hereby found to be, for two years, said terms to have commenced running from October 6, 1973. The Court finds that the con-

tinuation of the trusteeship is no longer warranted and directs that it cease upon the installation of the duly elected officers heretofore listed, and that defendant, Field, and defendant, Oliver, forthwith turn over all local union property in their possession to the appropriate officers whose election is herein validated. This permanent injunctive relief is directed to and binding on all named defendants, their officers, agents, servants, employees and attorneys.

Although there was abundant evidence that Oliver received illegal weekly remuneration from the pension, welfare and vacation funds until Field put a stop to it, plaintiffs have not furnished the Court with adequate proof of identifiable amounts. Although his convention and automobile expenses paid by the local union may have been exhorbitant, there is no evidence upon which the Court can distinguish reasonable items from unreasonable, besides which, Field, as trustee, had authority to order these expenses paid. Accordingly, the Court assesses no damages against Oliver, Field or the local union, the latter of which has already paid these expenses. It would be a futile gesture to direct the local union to pay again what it has already paid.

The Court reserves ruling at this time on an allowance of plaintiffs' attorney fees, primarily for the reason that there is no evidence presently before the Court as to any sums plaintiffs may already have paid their counsel.

With this one reservation, the Court considers this opinion and the order to be entered herein final for purposes of appeal.

An appropriate order may be submitted incorporating this opinion by reference, with costs assessed to the defendants.

S/Dan M. Russell, Jr.
UNITED STATES DISTRICT JUDGE

DATED: September 26, 1974

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
SOUTHERN DIVISION

Civ. A. Nos. 73S-263(R), S74-55(R)

MICHAEL J. McDONALD et al.,
Plaintiffs,

v.

HAROLD OLIVER et al.,
Defendants.

PETER J. BRENNAN, Secretary of Labor,
United States Department of Labor,
Plaintiff,

v.

LOCAL UNION 795, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, et al.,
Defendants.

Entered: October 24, 1974

Supplemental Opinion and Order.

Following a hearing on objections by defendants to an order, attached hereto as Exhibit "A", proposed by private plaintiffs and the Secretary of Labor in the above styled consolidated cases, and the Court having considered the proposed order together with its opinion of September 26, 1974, finds that (1) defendants' objections to Paragraph 2 of the proposed order awarding back pay to Michael McDonald for the time he would have served as president

of the local union had he been installed in November, 1973; (2) defendants' objections to Court costs being assessed against defendants Field and Oliver as well as against the ILA and local union; and (3) defendants' objections to the award of attorney fees on behalf of private plaintiffs should be and hereby are overruled for the reasons given in the Court's opinion at the conclusion of the hearing.

As to McDonald's back pay, the total amount should be reduced by his income from the Harrison County Board of Supervisors during the same period of time. As to the amount of such fees, the Court finds that the sum of $40.00 per hour was stipulated to between private plaintiffs and defendants as a reasonable fee for such services. The Court having examined the total hours attributed to private plaintiffs' action, including the preparation of pleadings, office time and trial time, and plaintiffs' success under counts based on Titles I and III of the Labor-Management Reporting and Disclosure Act of 1959, as amended, together with their cooperation with the Secretary of Labor under his counts based on Titles III and IV of said Act; and the Court further finding that plaintiffs' suit was necessary for the relief obtained, finds that plaintiffs are entitled to the full sum of $10,000.00 as attorneys fees, based on 250 hours x $40.00 per hour, and the sum of $1,207.07, as expenses, these sums to be awarded jointly and severally against the ILA, Field, Oliver and the local, and to include Court costs.

Accordingly, the proposed order, Exhibit A, is adopted and approved, and this supplemental opinion and order is hereby made a part thereof by reference, and both the proposed order and this supplemental opinion and order shall be and is the order of this Court.

SO ORDERED, ADJUDGED AND DECREED this the 24th day of October, 1974.

s/ DAN M. RUSSELL, JR.
United States District Judge

Exhibit "A" to Supplemental Opinion and Order.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NO. 73S-263(R)
(CONSOLIDATED)

MICHAEL J. MCDONALD; EUGENE LADNER; RICHARD CLARK; NORMAN J. LADNER; TONY LAMBERG; ELMER FORD; BERNIE RAY SAUCIER; and EUGENE NIOLET

COMPLAINANTS

VS.

HAROLD OLIVER; FRED R. FIELD, JR.,; IVY HERBERT; RUDOLPH TILLMAN; LYNN E. BANGS; J. D. SCARBOROUGH; SAMUEL E. MOORE; INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; and GULFPORT LOCAL 795 ILA

DEFENDANTS

AND

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor

PLAINTIFF

VS.

LOCAL UNION 795, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

and

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

DEFENDANTS

Exhibit "A" to Supplemental Opinion and Order.

ORDER

The issues in this cause having been tried before the Court without a jury, the evidence of all parties hereto having been heard, and the Court having rendered an Opinion on September 26, 1974 constituting its findings of fact and conclusions of law, it is this 24 day of October, 1974,

ORDERED, ADJUDGED AND DECREED as follows:

I.

The aforesaid Opinion of the Court dated September 26, 1974 is incorporated by reference into this Order and made a part hereof.

II.

The persons set forth in the aforesaid Opinion at pages 25 and 26 as having received the highest number of votes for the respective offices, to-wit: President, Michael McDonald; Vice President, Eugene Ladner; Secretary-Treasurer, Norman J. Ladner; Recording Secretary, Richard Clark; Sergeant-at-Arms, Tony Lamberg; and Trustees (three), Eugene Niolet, Elmer Ford, and Bernie Ray Saucier, are the duly elected officers of the defendant Local 795 for a two-year term of office, said term having commenced running on October 6, 1973. The President's salary for the aforesaid Michael McDonald shall also have commenced and shall be paid by Local 795 beginning on October 6, 1973.

III.

Upon installation of the duly elected officers set forth in paragraph II above, which installation shall be undertaken

Exhibit "A" to Supplemental Opinion and Order.

forthwith, defendant, International Union, shall discontinue the Trusteeship that it has assumed over defendant Local 795 and all rights, privileges and powers autonomous otherwise available to Local 795 under defendant International Union's Constitution and By-Laws shall be restored.

IV.

The defendants shall forthwith turn over, transfer and give possession of all records, keys, equipment, buildings and other property of Local 795 to the aforesaid officers.

V.

The defendants shall not hereafter, pursuant to Section 1 of Article VII of Local 795's July 7, 1973 Constitution and By-Laws, determine or declare Michael McDonald to be ineligible for office or election thereto because of any failure, omission, or lack of welfare benefit eligibility which precedes his being installed as President of Local 795 in accordance with paragraphs II and III above.

VI.

Defendant International Union, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are enjoined and restrained from further violating the provisions of Title III of the Labor Management Reporting and Disclosure Act of 1959, as Amended (29 U. S. C. 461, et seq.).

VII.

Defendant International Union shall file terminal trustee reports as required by 29 CFR, Secs. 408.7 and 408.8.

Exhibit "A" to Supplemental Opinion and Order.

VIII.

The costs of this action shall be assessed to the defendants.

IX.

The Court's ruling on allowance of plaintiffs' attorney fees is reserved until a hearing can be held on October 22, 1974, in Gulfport, Mississippi.

ORDERED, this 24 day of October, 1974.

s/ DAN M. RUSSELL
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-3731

MICHAEL J. McDONALD et al.,
Plaintiffs-Appellees,

v.

HAROLD OLIVER et al.,
Defendants-Appellants.

JOHN T. DUNLOP, Secretary of Labor,
U.S. Department of Labor,
Plaintiff-Appellee,

v.

LOCAL UNION 795, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, et al.,
Defendants.

Argued October 7, 1975 Decided January 14, 1976

Before GEWIN, COLEMAN and GEE, Circuit Judges.

C. T. Sykes, Jr., Gulfport, Miss., Thomas W. Gleason, Herzl S. Eisenstadt, New York City, Victor H. Hess, Jr., New Orleans, La., for defendants-appellants.

Alben N. Hopkins, Gulfport, Miss., for McDonald.

Robert E. Hauberg, U. S. Atty., Jackson, Miss., for Brennan.

George Palmer, U. S. Dept. of Labor, Birmingham, Ala., William Kanter, Barbara L. Herwig, Paul Blankenstein, App. Sec., Civ. Div., Dept. of Justice, Washington, D. C., for plaintiffs-appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

COLEMAN, Circuit Judge.

The various defendants appeal the judgment of the District Court, rendered under Titles I, III, and IV of the Labor Management Reporting Disclosure Act of 1959, 29 U.S.C. Sections 401, et seq,[1] mandatorily enjoining compli-

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[1] Title I

This is the "Bill of Rights" for union members, establishing certain basic democratic principles which must be adhered to by labor organizations.

Title 29 U.S.C. § 411 guarantees equal voting and participation rights, freedom of speech and assembly, freedom from improper assessments, protection of the right to sue, and safeguards against improper disciplinary action.

The remedial provision for violation of these rights appears in § 412, which reads as follows:

> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.
>
> • • • • • •

Section 411(a)(4) further provides that a member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within the union before instituting legal proceedings.

Title III

Title III of the Act, 29 U.S.C. § 462, provides for the imposition of a trusteeship by the international over a local to correct

(footnote continued on following page)

ance with the results of a union election in which the plaintiffs were chosen to be officers of Local 795 of the International Longshoremen's Association, dissolving a trusteeship over that Local, enjoining defendants from declaring McDonald ineligible for Local office, enjoining further violations of Title III, and awarding both back pay and attorney fees, *McDonald* v. *Oliver,* 400 F.Supp. 660 (S.D. Miss.1974).

Appellees cross appeal, asserting inadequacy of the awarded attorney fees and challenging the two year length of the term of office prescribed by the District Court.

Except as to that portion of the appeal which has been rendered moot, the Judgment of the District Court is affirmed on both direct and cross appeals.

(footnote continued from preceding page)

corruption or financial malpractice, assure performance of collective bargaining agreements, restore democratic procedures, or otherwise carry out the legitimate objects of the labor organization. Section 464 establishes a presumption that a trusteeship invoked in conformity with the union's procedural requirements and ratified after a fair hearing by the executive board is valid for 18 months. After that period it is presumed invalid and its discontinuance will be decreed unless the labor organization shows by clear and convincing proof that its continuation is necessary for one of the above purposes.

Section 464(a) establishes the following civil action for enforcement:

> (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this subchapter (except section 461 of this title) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this subchapter (except section 461

(footnote continued on following page)

Facts of the Case

Local 795 is one of two branches of the International Longshoremen's Association (ILA) operating in the Gulfport, Mississippi area. Internal dissension in the Local reached a peak in 1970, during Harold Oliver's second term as president, when all the other officers and 103 union members petitioned the International president to impose

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(footnote continued from preceding page)

of this title) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

Title IV

Title IV generally relates to election improprieties and places the exclusive authority to sue for post-election redress in the hands of the Secretary of Labor.

Title 29 U.S.C. § 481(e) provides for reasonable nomination opportunities, the eligibility of every member in good standing to be a candidate and hold office, the right to vote for or support the candidate of one's choice without being subject to penalty or disciplinary action, advance notice to all members of elections, and conducting elections in accordance with the union's by-laws and constitution except to the extent they are inconsistent with Title IV.

Section 482, the enforcement provision, permits a union member who has exhausted his internal remedies or who has invoked available remedies without obtaining a final resolution within three months after their invocation, to file a complaint with the Secretary of Labor. The challenged election is presumed valid pending a final decision. Upon investigating the complaint, the Secretary may bring a civil action against the labor organization for a violation of the subchapter. If the court finds that an election has not been held within prescribed time limits or that a violation of § 481 may have affected the outcome of an election, the court must declare the election void and direct the conduct of a new one under the Secretary's supervision. The Secretary then certifies the names of those elected, and the court enters a decree to that effect.

Section 483 specifies that this remedy for challenging an election is exclusive.

a trusteeship on the Local. The purpose of the petition, of course, was to relieve Oliver of his presidency. Among the specifications in the bill of particulars submitted to an International special committee were that (1) Oliver had solicited new members into the Local at a time when there was insufficient work available for the current members of the Local; (2) he had controlled the appointment of foremen and thereby the hiring practices of management, to the deterinent of senior members of the union; (3) in collusion with management, he had usurped the right of other officers and members of the Local to engage in collective bargaining; and (4) he had failed and refused to seek arbitration of grievances as provided for in the collective bargaining agreement after having been requested to do so by members and officers of the Local.

There were complaints, also, concerning the management of Local 795's Pension, Welfare and Vacation Trust Funds. Specifically, as a trustee for the Fund, McDonald objected to the $220 per week Oliver and the president of 795's sister Local 1303 were receiving as compensation for handling claims against the Funds.

After a hearing, the special committee recommended that Local 795 be placed in trusteeship. The committee found that Oliver never had any intention of implementing the seniority provisions of the Local's collective bargaining agreements, that employees were being selected for work without regard to seniority, and that Oliver had appointed supervisors to head the Local's election committees in order to insure his continued control of the Local's affairs. The ILA Executive Council then voted to invoke the trusteeship.

In April of 1971, the ILA president appointed the Trustee. He was Fred Field, a general organizer and vice-president of the ILA. Field was authorized to assume immediately the duties of trustee, to take all steps necessary

to correct any abuses in the Local's pension and welfare fund operation, to negotiate and place into effect a seniority system for the protection of all longshoremen, and to remove, if necessary, any and all officers of the Local.

Oliver's alleged mismanagement of the Local's affairs and abuse of his powers as president caused the imposition of the trusteeship. Trustee Field acknowledged that Oliver drank heavily and was in trouble with respect to the trust funds. Nevertheless, Field did not remove Oliver from office. On the contrary, he delegated virtually all of his duties to Oliver. As should have been expected, this course met with dissatisfaction. By September, 1972, the amount owed by companies to the trust funds rose to over $658,000, with no legal attempt at collection. This was not all. The seniority plan was not effected, Oliver traveled to union meetings and conventions as an observer at the Local's expense, and the rosters of Local 795 and black Local 1303 had not been integrated.

On February 16, 1973, a complaint was filed with the Secretary of Labor, in which members of the Local asserted that the trusteeship had not "accomplished the purpose for which it was established and under present conditions there is no just cause to continue the trusteeship". The complaint also asserted that the continuance of the trusteeship was detrimental to the membership of the Local. Accordingly, the complaining members requested that the trusteeship be brought to an immediate conclusion, and an election for new officers be held at once.

The Secretary investigated the complaint and found probable cause to believe that no valid purpose would be served by a continuance of the trusteeship which had been in existence for more than 18 months. However, during the course of the investigation, the Secretary had information that the ILA intended to end the trusteeship and had set up a schedule for the election of new officers. Based

upon this information, the Secretary determined for the time being not to pursue legal action to terminate the trusteeship.

In June of 1973, Field set up the following schedule for resumption of the Local's autonomy.

(1) July 7, 1973—Membership meeting to explain Seniority Plan.

(2) August 4, 1973—Distribution of seniority cards.

(3) August 13, 1973—New hiring system under Seniority Plan to go into effect.

(4) September 1, 1973—Meeting for nomination of officers of Local 795.

(5) October 6, 1973—Election of officers.

(6) November 3, 1973—Installation of new officers.

This timetable for dissolution of the trusteeship was adhered to through the October 6 election, except that in the meeting of July 7, Oliver chose not to explain the Seniority Plan but sought approval of a new constitution and by-laws which would have had the effect of disqualifying both his opponents for the Local presidency. Because the constitution and by-laws were not approved by the International prior to election, they were deemed not to have any effect upon the eligibility of the candidates for the various offices.

On October 6, McDonald received 136 votes for president, Oliver received 115, and LeBeau 66; McDonald's plurality, 21.

After the winners were certified, a number of protests to the election were filed by individual members of the Local, such as that (1) McDonald was ineligible to hold union office because he had not been working or seeking work as

a longshoreman for the year prior to the election, contrary to the provisions of the International's constitution and (2) LeBeau, who had been working as a supervisor for the Sealand Terminal Company, had not resigned this capacity sufficiently prior to the election, contrary to the ILA constitutional provision prohibiting union officers or candidates from holding supervisory positions.

The District Court found that McDonald had been seeking work but was unable to find employment on the docks because of pressure imposed by Oliver upon gang foremen not to hire him. The Court also found that when LeBeau ran for the presidency he was no longer working as a supervisor and was therefore eligible for the office.

On October 22, 1973, through his attorney, McDonald wrote ILA President Gleason requesting information about the election protests so that "appropriate measures may be taken to insure the installation of duly elected officers". On October 24, Gleason wrote McDonald that he was awaiting a recommendation from the president of the South Atlantic & Gulf Coast District of the ILA before taking action. The following day, the district president telegraphed Gleason that the scheduled installation of officers should be stayed pending further investigation. The International's president concurred in the recommendation, and the ILA Executive Council voted to stay the installation of officers. The members of the Local were notified that a committee of three ILA vice-presidents had been appointed to investigate the election.

Because of the ILA's decision to stay the scheduled installation, plaintiffs filed suit on November 27, 1973, under Titles I and III of the LMRDA seeking, among other things, their installation as officers and an end to the trusteeship.

In the meantime, the ILA continued its investigation of the alleged election irregularities. On the basis of hearings

held by the International in early January, the committee concluded that the October 6 election should be declared invalid. Specifically, the comittee found that the following violations of the constitution and by-laws of the Local and of the International had influenced the election: (1) members who were not qualified were nominated and received votes for the office of president (McDonald and LeBeau); (2) ineligible persons were allowed to vote in the election; and (3) poll watchers for the various candidates were asked to leave the voting area before all the ballots had been cast. The committee also recommended that a new election be held under the auspices of the ILA.

Upon learning of these rulings, the plaintiffs appealed to ILA President Gleason on January 17, 1974. When they received no response, they lodged a complaint with the Secretary of Labor on January 24, 1974. The following day an investigation was commenced by Thomas Sutton, a Labor Department official. Sutton reported that he found no invalidating improprieties in the election and that duly elected officials of the Local were being unjustly kept from assuming their positions. Based upon the determination that there was probable cause to believe that continued maintenance of the trusteeship over the Local and failure to install the duly elected officers were violative of Titles III and IV of the LMRDA, the Secretary filed suit under both Titles on March 25, 1975.

Between the plaintiffs' complaint to the Secretary and the commencement of the Secretary's action, the ILA Executive Council affirmed the report of its investigation committee, set aside the election of October 6, and ordered a new election to be held on May 25, 1974. Upon learning of this development, the Secretary sought and obtained a temporary restraining order preventing the ILA from holding the proposed May election.

The District Court consolidated the action of the individual plaintiffs (Titles I and III) with the Secretary's action (Titles III and IV). Following a 7-day trial, the District Judge found that the individual plaintiffs had properly invoked the jurisdiction of Titles I and III relative to (1) the denial of job opportunities to those opposed to the union hierarchy, (2) the failure of the defendants to recognize plaintiffs' voting rights by voiding the October election, and (3) the continuation of the trusteeship. Plaintiffs were found to have unavailingly exhausted their internal union remedies, a prerequisite to Title I and IV actions. The District Court opinion noted that post-election relief is usually the sole prerogative of the Secretary, but found the allegations in this case to be much broader in scope than those typically advanced in a suit challenging the validity of an election. The Court felt that the individual plaintiffs were not only prosecuting their own interests, but also those of the union members whose votes were nullified by the defendants' actions.

Premised upon the finding that the October election was valid, the refusal to install the plaintiffs was deemed to "effect the outcome of an election", and to state a Title IV cause of action which could be maintained by the Secretary. Denying complainants their right to hold office was found to be contrary to the intent and meaning of § 401(e) of the LMRDA, 29 U.S.C. 481(e). The individual plantiffs were allowed to amend their complaint to allege the same Title IV grounds as the Secretary and thereby intervene in his action.

The Court further held that it was not required to order a new election—that under Title I and its own inherent equity powers it could validate the October election if it were found to have been properly conducted.

A review of the election's propriety presented two sharply contested issues: (1) whether McDonald was an eligible

candidate for president and (2) whether the other challenged aspects of the election might have affected its outcome. On the basis of the testimony of several witnesses, the Judge determined that McDonald had been seeking work on the docks for the requisite year but had been denied employment because of Oliver's pressure on the hiring foremen. The question concerning LeBeau's eligibility was whether he had resigned from his supervisory capacity sufficiently prior to the election. The Court found that he had done so. The evidence further disclosed that alleged violations relative to voter eligibility and the removal of poll watchers were not well founded, nor would they have affected the outcome of the election.

Accordingly, on October 24, 1974, the Court declared the plaintiffs to have been duly elected on October 6, 1973, for a term of 2 years. It directed their immediate installation as officers and the trusteeship was ordered dissolved. The ILA was prohibited from declaring McDonald ineligible for office "because of any failure, omission, or lack of welfare benefit eligibility which precedes his being installed as President of Local 795 . . .". Finally, the ILA was enjoined from further violating the provisions of Title III of the LMRDA.

McDonald was awarded back presidential pay from the Local dating from October 6 when he was elected, less what he had received from other employment. The individual plaintiffs were also allowed attorneys' fees in the amount of $10,000, plus $1207.07 expenses, against the ILA, Field, Oliver, and the Local.

Plaintiffs then proceeded to serve out their terms in office, which expired October 5, 1975, as per the order of the Court. Another election took place on October 4, 1975. All those chosen in the election of October 6, 1973 were re-elected, with one exception. We heard oral argument on this appeal on October 7, 1975.

The Appellate Contentions

Appellants argue that there was no Title I jurisdiction for relief to the individual plaintiffs; that only the Secretary of Labor had authority to seek post-election relief but that his Title IV authority failed for lack of exhaustion of internal union remedies; that the Secretary had no authority to seek, nor had the Court the power to order, installation of the Local officers; that the Court improperly resolved the issue of eligibility of two of the candidates for president of the Local; and the award of attorney fees was without basis.

The plaintiff-appellees assert that the attorney fee allowance was inadequate and that the District Court erred in limiting the terms of office to two years instead of three.

The issues raised by the appellants, except for back pay and attorney fees, have been mooted by the election of October 4, 1975.

Mootness

Under Article III of the Constitution, federal courts have jurisdiction of *actual* cases or controversies. The controversy must exist when the suit is instituted and it must exist at all stages of appellate review. See *DeFunis* v. *Odegaard,* 416 U.S. 312, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974) and *Roe* v. *Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Preiser* v. *Newkirk,* 422 U.S. 395, 95 S.Ct. 2330, 45 L.Ed.2d 272 (1975).

Under the facts of this case we have no difficulty in concluding that the expiration of plaintiffs' two-year term of office and the holding of a scheduled election for Local officers while this appeal was in progress has extinguished the underlying controversy and rendered this case moot as to all issues except the attorney fees awarded the individ-

ual plaintiffs and back pay awarded McDonald. To be more specific, the individual plaintiff-appellees do not now hold Local office by virtue of the District Court judgment that the October 6 election was valid. Their present tenure is based on their victory in the election held October 4, 1975. The validity of that election is not an issue in this appeal.

Wirtz, Secretary of Labor, v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 88 S.Ct. 643, 19 L.Ed.2d 705 (1968) was a case in which a Section 401 violation had occurred because the union imposed an unreasonable restriction on members' eligibility as candidates for office. Another regular election had been held. The Supreme Court ruled that this election did not moot the case because the Secretary of Labor had the right to a court order voiding the challenged election and directing a new election to be *conducted under his supervision* (emphasis ours). To like effect, see the companion case of *Wirtz* v. *Local 125, Laborers' International Union,* 389 U.S. 477, 88 S.Ct. 639, 19 L.Ed.2d 716 (1968). In our present case, however, the Secretary was not seeking to set aside an election as invalid but, to the contrary, took the position that the election was valid. That position was sustained by the District Court and the Secretary has been granted the relief he sought. The trusteeship is ended. The plaintiffs have served the terms to which they were elected, the terms which the Secretary sought to vindicate. Accordingly, the public interest inherent in the Secretary's suit has been satisfied.

Nothing remains but a consideration of the attorney fees and the back pay awarded pursuant to the suit brought by those other than the Secretary.

Back Pay and Attorney Fees Awarded Individual Union Members Under Titles I and III

Although the injunction-related issues asserted on behalf of the individual union member plaintiffs are moot for exactly the same reasons applicable to the Secretary's complaint, the awards of back pay and attorney fees are yet alive for appellate resolution.

This necessitates a determination of whether such relief is available under Titles I and III of the LMRDA. If it is, are the awards justified? See *Kerr* v. *Screen Extras Guild, Inc.*, 9 Cir. 1972, 466 F.2d 1267, 1269, *cert. denied*, 412 U.S. 918, 93 S.Ct. 2730, 37 L.Ed.2d 144 (1973); *Yablonski* v. *United Mine Workers of America*, 1972, 148 U.S. App.D.C. 177, 459 F.2d 1201, 1202.

Availability of Damages and Attorneys' Fees

The civil remedy provisions of both Titles I and III, 29 U.S.C. §§ 412 and 464 permit actions "for such relief (including injunctions) as may be appropriate". When dealing with such a broad grant of equitable jurisdiction in a regulatory statute, the priciple is well established that:

> Congress . . . must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes. As this Court long ago recognized "there is inherent in the Courts of Equity a jurisdiction to . . . give effect to the policy of the legislature."

Mitchell v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 291-92, 80 S.Ct. 332, 335, 4 L.Ed.2d 323 (1960).[2]

[2] See also *Renegotiation Board* v. *Bannercraft Clothing Co.*, 415 U.S. 1, 16-20, 94 S.Ct. 1028, 39 L.Ed.2d 123 (1974); *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946).

Relief which is incident and ancillary to the primary claim is therefore properly within the judge's discretion, *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-30, 64 S.Ct. 587, 88 L.Ed. 754 (1944); *Meredith* v. *Winter Haven*, 320 U.S. 228, 235, 64 S.Ct. 7, 88 L.Ed. 9 (1943).

Under this rationale, compensatory damages, including lost pay for officers who were improperly removed, have been allowed as necessary to afford complete relief.[3]

Although the cited cases all deal with actions under § 102 of the LMRDA, 29 U.S.C. § 412, the identical language of the Title III trusteeship provisions should authorize the same result.

In *Hall* v. *Cole*, 412 U.S. 1, 10, 93 S.Ct. 1943, 1949, 36 L.Ed.2d 702 (1973), the Supreme Court stated:

> Thus, § 102 does not "meticulously detail the remedies available to a plaintiff," and we cannot fairly infer from the language of that provision an intent to deny to the courts the traditional equitable power to grant counsel fees in "appropriate" situations.

Founded upon the "common benefit" approach clearly articulated in *Mills* v. *Electric Auto Lite*, 396 U.S. 375, 392-94, 90 S.Ct. 616, 24 L.Ed.2d 593 (1970), *Hall*, 412 U.S. at 5-6, 93 S.Ct. at 1946 noted the established exception to the American rule against awarding attorneys' fees in cases in which the plaintiff's successful litigation confers

> "a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over

[3] *International Brotherhood of Boilermakers* v. *Braswell*, 5 Cir., 388 F.2d 193, 199, *cert. denied*, 391 U.S. 935, 88 S.Ct. 1848, 20 L.Ed.2d 854 (1968); *Kerr* v. *Screen Extras Guild, Inc.*, 9 Cir. 1972, 466 F.2d 1267, 1270, *cert. denied*, 412 U.S. 918, 93 S.Ct. 2730, 37 L.Ed.2d 144 (1973); *International Brotherhood of Boilermakers* v. *Rafferty*, 9 Cir. 1965, 348 F.2d 307, 314-15; *Salzhandler* v. *Caputo*, 2 Cir. 1963, 316 F.2d 445, 451; *Retail Clerks Union, Local 648* v. *Retail Clerks Int'l Ass'n*, D.D.C. 1969, 299 F.Supp. 1012, 1021.

> the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them." . . . "Fee shifting" is justified in these cases, not because of any "bad faith" of the defendant but, rather, because "[t]o allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense."

Analogized to reimbursement of fees out of a corporate treasury, awarding fees against the local union merely shifts the costs of litigation to the class that benefited from it. *See also Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U.S. 714, 87 S.Ct. 1404, 18 L.Ed.2d 475 (1967); *Trustees* v. *Greenough*, 105 U.S. 527, 26 L.Ed. 1157 (1882).

Although the primary purpose of an individual's lawsuit is obviously to vindicate his own rights or facilitate his own candidacy, there can be little doubt that he renders a substantial service to the union as an institution and to its members individually in protecting local democratic processes through Titles I and III. The successful litigant dispels the "chill" cast upon the rights of others. *Hall*, 412 U.S. at 8, 93 S.Ct. 1943; *Yablonski* v. *United Mine Workers of America*, 1972, 151 U.S.App.D.C. 253, 466 F.2d 424, 430, *cert. denied*, 412 U.S. 918, 93 S.Ct. 2729, 37 L.Ed.2d 144 (1973).

The teaching of *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975), that under the American rule the prevailing party is ordinarily not entitled to collect a reasonable attorneys' fee from the loser, does not mandate that result in equitable suits under Titles I or III. The Court stated on pages 257-59, 95 S.Ct. on page 1621:

> In *Trustees* v. *Greenough*, 105 U.S. 527, 26 L.Ed. 1157 (1881), the 1853 Act was read as not interfering with the historic power of equity to permit the trustee of a fund or property, or a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit. That rule has been consistently followed.

Mills v. *Electric Auto-Lite* and *Hall* v. *Cole* were then cited as recent authority for the same proposition.

Additionally, as a basis for awarding attorneys' fees in Title I suits, the Court has recognized that such fees are clearly consonant with the congressional intent to afford necessary protection of the rights and interests secured by the Act. Quoting the Court of Appeals, *Hall* stated 412 U.S. at 13, 93 S.Ct. at 1950:

> Not to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose. It is difficult for individual members of labor unions to stand up and fight those who are in charge. The latter have the treasury of the union at their command and the paid union counsel at their beck and call while the member is on his own. . . . An individual union member could not carry such a heavy financial burden. Without counsel fees the grant of federal jurisdiction is but a gesture for few union members could avail themselves of it. 462 F.2d at 780-81.[4]

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[4] *See also Yablonski* v. *United Mine Workers of America*, 1972, 151 U.S.App.D.C. 253, 466 F.2d 424, *cert. denied*, 412 U.S. 918, 93 S.Ct. 2729, 37 L.Ed.2d 144 (1973); *Gartner* v. *Soloner*, 3 Cir. 1967, 384 F.2d 348, 355, *cert. denied*, 390 U.S. 1040, 88 S.Ct. 1633, 20 L.Ed.2d 302 (1968); *Robins* v. *Schonfeld*, S.D.N.Y.1971, 326 F.Supp. 525; *Sands* v. *Abelli*, S.D.N.Y.1968, 290 F.Supp. 677, 686.

Although the financial burden inherent in Title I suits where an individual has no alternative but to bring the action himself supports the award of fees, this is merely an additional justification and does not mandate the denial of fees when a union member may also seek governmental intervention on his behalf, as in Title III. The primary factors of identical equitable relief language and common benefit to the union's membership are just as viable in Title III as in Title I. At the least, a member's suit to dissolve a trusteeship may aid the Secretary of Labor in resolution of the issues; the members may seek relief different from or in addition to that sought by the Secretary which they do not wish to have barred by the *res judicata* effect of the Secretary's suit imposed by 29 U.S.C. § 466; or at the most, the Secretary may refuse to file a suit and the members *must* seek their own relief. In numerous statutes Congress has recognized the propriety of allowing attorney fees even though an individual may invoke the government's legal resources to prosecute a cause.[5] We

[5] For example, § 16 of the Fair Labor Standards Act, 29 U.S.C. § 216, permits fees in a suit to recover unpaid minimum wages or overtime compensation even though an aggrieved person may file a complaint with the Secretary of Labor to bring the action. Section 308 of Part III of the Interstate Commerce Act, 49 U.S.C. § 908, allows a private action with recovery of attorney fees or a complaint with the ICC to obtain the same relief for certain violations of the Act by water carriers. Title II of the Civil Rights Act of 1964, § 204, 42 U.S.C. § 2000a-3(b), provides for fees in public accommodation and statutory discrimination cases despite the authority of the Attorney General to sue on the basis of the same pattern or practice under § 2000a-5; the Supreme Court in *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968) noted that the nation had to rely in part on private litigation to secure broad compliance with the law and that allowing attorney fees encouraged individuals to seek relief Section 718 of Title VII of the Emergency School Aid Act, 20 U.S.C. § 1617, as applied in *Northcross* v. *Board of*

(footnote continued on following page)

hold, therefore, under the common benefit theory that an award of attorney fees is permissibly within equitable discretion in both Title I and Title III cases.

As noted earlier in *Mills* and *Hall,* the fees are to be granted against the *local union* to avoid unjust enrichment of the membership. We have found only one case in which fees were imposed on individuals or the international, *Robins* v. *Schonfeld,* S.D.N.Y.1971, 326 F.Supp. 525, 531. We think that the common benefit rationale does not justify such a punitive award. Only if an individual or the international has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons" should fees be shifted to others besides the local. *See Alyeska* 421 U.S. at 247, 95 S.Ct. 1612 and *Hall* 412 U.S. at 5, 93 S.Ct. 1943.

Examining the Title III claim first, the Court undoubtedly had jurisdiction over the case. Congress recognized that trusteeships had, at times, been used as a means of consolidating the power of corrupt union officers, plundering and dissipating the resources of local unions, and preventing growth of competing political elements within the organization. To determine whether a trusteeship is being abused in such a manner or is meeting the enumerated purposes of the statute, Title III must be construed in

(footnote continued from preceding page)

Education of Memphis City Schools, 412 U.S. 427, 93 S.Ct. 2201, 37 L.Ed.2d 48 (1973), authorizes fees in school desegregation cases even though the Attorney General, under Title IV, 42 U.S.C. § 2000c-6, may seek redress of the situation upon the filing of a complaint by one who cannot afford to sue. The Servicemen's Readjustment Act, 38 U.S.C. § 1822, permits attorney fees in an action to recover the excess above the reasonable purchase price of property bought with a VA loan or a suit by the Attorney General upon request.

The policies behind these statutes are as varied as their subject matter, but they all lend credence to the proposition that availability of government action does not automatically foreclose recovery of attorney fees in a private suit if they are otherwise authorized by law.

light of the various other provisions of the LMRDA. The purpose of the Act as a whole

> is not only to stop and prevent outrageous conduct by thugs and gangsters but also to stop lesser forms of objectionable conduct by those in positions of trust and to protect democratic processes within union organizations. . . . [T]he rights of individual members of a labor union are protected by federal statute with a view to allowing those members to conduct local matters with a minimum of outside interference. In short, local affairs are to be governed by local members under democratic processes.

United Brotherhood of Carpenters and Joiners of America v. *Brown*, 10 Cir. 1965, 343 F.2d 872, 882.

The Secretary had already found that the trusteeship was not fulfilling statutory purposes and refrained from filing suit only because Field initiated an election timetable. The conduct of Oliver, the trustee's agent, in attempting to disqualify his opponents, Field's lack of supervision of the Local's affairs and election process, and the International's voiding of the election and continuation of a presumptively invalid trusteeship only exacerbated the situation and made a mockery of "internal democratic processes".

In asserting their rights against the trusteeship, the members were not required to exhaust internal remedies. Unlike Titles I and IV, Title III contains no exhaustion requirement. Intra-union appeals would be unlikely to provide much relief since the protests would be to the very International which invoked the trusteeship. *United Brotherhood of Carpenters* at 880; *Hotel & Restaurant Employees & Bartenders' Int'l* v. *Del Valle*, 1 Cir., 328 F.2d 885, 886, *cert. denied*, 379 U.S. 879, 85 S.Ct. 146, 13 L.Ed.2d 86 (1964); *Parks* v. *International Brotherhood of*

Electrical Wkrs., 4 Cir., 314 F.2d 886, 923, *cert. denied*, 372 U.S. 976, 83 S.Ct. 1111, 10 L.Ed.2d 142 (1963). Thus, plaintiffs properly stated their claim before the District Court, and the findings of fact below conclusively mandated the dissolution of the trusteeship.

The Back Pay Issue

This brings us to the back pay issue. Obviously the award cannot be justified unless the Court had authority to order the officers installed. Having ordered the trusteeship dissolved as it should have been, some determination had to be made on where to place control of the Local's affairs. At least two circuits have approved the use of the court's equitable jurisdiction to direct the holding of a special election in such a situation. *Brennan* v. *United Mineworkers of America*, 1973, 155 U.S.App.D.C. 24, 475 F.2d 1293, 1296; *Schonfeld* v. *Raftery*, S.D.N.Y., 271 F.Supp. 128, 148, *aff'd*, 2 Cir. 1967, 381 F.2d 446.

If a court may order an election held with the results to be confirmed by its certification, no cogent reason appears to suggest that it may not or should not validate an election already properly held. In doing so here, all the District Court really did was make a collateral determination on the eligibility of two candidates. The same thing was done in *Burch* v. *International Ass'n of Machinists & Aerospace Wkrs.*, S.D.Fla. 1971, 337 F.Supp. 308, which ordered the termination of a trusteeship and declared plaintiff a proper nominee for the pending election.

In determining McDonald's eligibility, the District Court found that he had been seeking work in the trade for the requisite year, but had been denied employment because of Oliver's coercion of supervisors. In making that finding the trial judge was faced with a credibility choice between witnesses, and we do not appraise his decision as clearly erroneous.

Appellants' primary objection is that this constituted determination of a blacklisting charge, an unfair labor practice which can be considered only by the NLRB under § 8 of the National Labor Relations Act, 29 U.S.C. § 158.

The pre-emption doctrine which places practices "arguably" condemned by § 8 within the exclusive jurisdiction of the NLRB developed in *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). The rationale for deference of state and federal courts to the competence of the Board is to avert interference with national labor policies. *William E. Arnold Co.* v. *Carpenters Dist. Council of Jacksonville & Vicinity,* 417 U.S. 12, 15, 94 S.Ct. 2069, 40 L.Ed.2d 620 (1974); *Local 100, United Ass'n of Journeymen & Apprentices* v. *Borden,* 373 U.S. 690, 693, 83 S.Ct. 1423, 10 L.Ed.2d 638 (1963).

Borden construed the union membership rights protected by § 8(a)(3) and incorporated in § 8(b)(2) to embrace participation in union activities and maintenance of good standing as well as mere adhesion to the labor organization. Therefore if a labor organization attempts to cause an employer to discriminate against an employee in order to discourage his participation in union activities, a § 8 cause of action is "arguably" present and the NLRB has exclusive jurisdiction. *See also Scofield* v. *NLRB,* 394 U.S. 423, 428, 89 S.Ct. 1154, 22 L.Ed.2d 385 (1969). *Borden* went on to note, however, that the conduct *upon which that suit was centered* was conduct the lawfulness of which could initially be judged only by the federal agency, not by the *state* court where the action was filed. The Court at 697 specifically declined to speculate on the effect of *Garmon* on *International Ass'n of Machinists* v. *Gonzales,* 356 U.S. 617, 78 S.Ct. 923, 2 L.Ed.2d 1018 (1958). *See Amalgamated Assoc. of Street, Electric Railway & Motor Coach Employees* v. *Lockridge,* 403 U.S. 274, 296-98, 91 S.Ct. 909, 29 L.Ed.2d 473 (1971).

Gonzales permitted collateral relief for lost employment where the suit "focused on purely internal union matters, *i.e.,* on relations between the individual plaintiff and the union not having to do directly with matters of employment . . ." and where the principal relief sought was restoration of union membership rights. Thus, in dealing with meritorious Title I suits, distinctly collateral allegations which might also constitute unfair labor practices have been held not to oust the court of jurisdiction. The Third Circuit explained:

> The explicit Congressional declaration and the reasoning, in an analogous situation, of the Supreme Court in *Gonzales,* establish that the district court is competent to retain jurisdiction of a Section 101(a)(5) suit even when elements of the case are arguably subject to the Board's jurisdiction. "The fact that the Act preserves to union members all remedies 'under any State or Federal law or before any court or other tribunal . . .,' § 103 of the LMRDA, 29 U.S.C. § 413 . . . only means that the new federal protection was superimposed on protection already available in other forums . . . Summers, 'The Law of Union Discipline: What the Courts Do in Fact,' 70 Yale L.J. 175, 176 (1960)."

Rekant v. *Schochtay-Gasos Union Local 446, etc.,* 3 Cir. 1963, 320 F.2d 271, 275.[6]

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[6] Suits under the LMRDA which involve unfair labor practices are analogous to actions under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185. An individual may sue to redress a violation of a collective bargaining agreement even though the violation itself may constitute an unfair labor practice. Like the LMRDA § 301 has been held to confer substantive rights upon union members and Congress has been deemed to have directed the courts to formulate and apply federal law to these suits. *Garmon* has been held not to preempt individual actions under § 301. *Smith* v. *Evening News Ass'n,* 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962). *See Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, 77 S.Ct. 923, 1 L.Ed.2d 972 (1957).

Parks v. *International Brotherhood of Electrical Wkrs.*, 4 Cir. 1963, 314 F.2d 886, 922, went on to state, "Congress did not intend that before securing the rights it made enforceable in federal courts, individuals should wait for the Labor Board to pass upon such matters as might also be within its competence."[7]

The case primarily relied upon by appellants, *Green* v. *Local 705, Hotel & Restaurant Employees, etc.*, E.D.Mich. 1963, 220 F.Supp. 505, is not persuasive on the pre-emption issue. Therein, the court found that plaintiffs had failed to state a Title I cause of action and were attempting to argue a § 8 case under the LMRDA. The primary finding in the grant of incidental relief in this case, on the other hand, was that McDonald had been seeking work in the trade and was, therefore, an eligible candidate. The finding as to why he had not actually been working was purely collateral.

As to LeBeau's candidacy, apparently the only issue raised by the protest was whether he had resigned from his supervisory position sufficiently prior to the election. The District Court correctly found that he had. Appellants now contend that the Court should also have considered, and declared LeBeau ineligible upon the ILA constitutional stricture of working or seeking work in the trade for the year preceding the election. This issue apparently was not

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[7] Other courts have similarly held. *Grand Lodge of the Int'l Ass'n of Machinists* v. *King*, 9 Cir., 335 F.2d 340, *cert. denied*, 379 U.S. 920, 85 S.Ct. 274, 13 L.Ed.2d 334 (1964); *Bussey* v. *Plumbers Local No. 3*, 10 Cir. 1961, 286 F.2d 165; *Robertson* v. *Banana Handlers Int'l Longshoremen's Ass'n, Local 1800*, E.D.La. 1960, 183 F.Supp. 423. *See Detroy* v. *American Guild of Variety Artists*, 2 Cir., 286 F.2d 75, *cert. denied*, 366 U.S. 929, 81 S.Ct. 1650, 6 L.Ed.2d 388 (1961); *Robins* v. *Schonfeld*, S.D.N.Y. 1971, 326 F.Supp. 525; *Burris* v. *International Brotherhood of Teamsters, etc.*, W.D.N.C. 1963, 224 F.Supp. 277.

addressed by the original protest, the ILA's investigation, the Labor Department's investigation, the pleadings, or the exhibits; and was only once fleetingly and indirectly mentioned at trial. Although this point is raised belatedly, we feel that LeBeau, in his supervisory capacity, was directly and intimately involved in the trade or craft of being a longshoreman. We are dealing with broad generic words and a man closely associated with the activities they connote.

The other errors which were alleged in the original election protests were not raised by appellants as issues for appellate review. Not until their reply brief did they belatedly contest the District Court's findings in this regard. We deem that these points of contention could not have affected the election, and are therefore immaterial. The challenges to the election's validity are without merit; the trial Judge's findings in this regard are not clearly erroneous.

Full, complete, and equitable relief in this case, then, must certainly include validation of the election results. One of the primary purposes of a trusteeship is assurance of internal democratic functioning of a union. When a trusteeship is employed to thwart that functioning, Congressional intent is best served by placing management of the Local in the hands of those selected by the union members. Here they had made that selection.

We fully recognize that the courts must exercise sound reluctance to interfere with internal union affairs. Particularly in regard to post-election remedies which may be pursued only by the Secretary of Labor under Title IV, we do not intend to place union officers in a strait jacket by permitting them to be constantly haled into court after every election by any dissident member who is dissatisfied with the results. An unmeritorious claim under some other

Title will not be permitted as a bootstrap to consider what is actually only a Title IV action.[8]

Although committed to minimal intervention, the courts should use warranted intervention, effective to enforce the guarantees of the Act. Where the international, under the guise of a trusteeship, places obstacles in the way of effective union democracy or appears to do so, the court cannot give that conduct any recognition when it offends equity and the LMRDA. *Cf., Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n,* 389 U.S. 463, 473, 88 S.Ct. 643, 19 L.Ed.2d 705 (1968); *NLRB* v. *Erie Resistor Corp.,* 373 U.S. 221, 228, 83 S.Ct. 1139, 10 L.Ed.2d 308 (1963).

Unlike the plethora of Title I cases in which disgruntled union members sought to directly attack an election because of an alleged violation of their "bill of rights", we are dealing here with an unequivocally invalid trusteeship; a trusteeship which merely perpetuated the evils it was supposed to correct. In such a case where intervention is necessary, the district court is bound by equity to afford complete justice. This it could not do here without considering whether the refusal to install the officers and continuation of the trusteeship was improper. Having so

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[8] *See, e. g., Trbovich* v. *United Mine Workers of America,* 404 U.S. 528, 531-35, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972); *Calhoon* v. *Harvey,* 379 U.S. 134, 140-41, 85 S.Ct. 292, 13 L.Ed.2d 190 (1964); *Nelms* v. *United Ass'n of Journeymen & Apprentices of Plumbing, etc.,* 5 Cir. 1968, 405 F.2d 715, 718; *Cefalo* v. *Moffett,* 1971, 146 U.S.App.D.C. 117, 449 F.2d 1193, 1200; *Davis* v. *Turner,* 9 Cir., 395 F.2d 671, *cert. denied,* 393 U.S. 987, 89 S.Ct. 467, 21 L.Ed.2d 449 (1968); *Mamula* v. *United Steelworkers of America,* 3 Cir. 1962, 304 F.2d 108, 109, S.Rep.No.187, 86th Cong., 1st Sess. 397, 417 (1959); Hearings on S. 505 et al. Before the Subcomm. on Labor of the Sen. Comm. on Labor and Public Welfare, 86th Cong., 1st Sess. 567 (1959). These authorities are in agreement that questions of eligibility for office, qualifications of candidates, nomination procedures, and election processes are normally reserved for a suit by the Secretary.

found, the next logical and fair step was to order the plaintiffs into office. In this case, we also have the advantage of the Secretary's concurrence that such relief was proper. Compensatory damages in the form of back pay are, therefore, a proper form of relief in this case.

Having succeeded on the merits, plaintiffs returned democratic processes and autonomy to the Local to the common benefit of its members. Attorneys' fees as awarded by the District Court against the Local are appropriate.

Title I Claims

We find it unnecessary to reach specifically appellants' questions regarding plaintiffs' Title I claims. McDonald *et al.* had to prove essentially the same facts to sustain the primary and incidental relief we have found proper under Title III as they would have in their voting rights case. Therefore, the full amount of the fees awarded is justified.

Without expressly reaching the issue, we do note that a Title I action standing alone and expressly directed to post-election relief is of doubtful validity.

Bad Faith

As discussed earlier, attorney fees directed against any party but the Local must be justified on a bad faith rather than a common benefit rationale Although the trial judge did not use the "magic words", his factual findings are replete with the most glaring examples of bad faith and oppressiveness.

The International, through its appointed agent Field, was responsible for seeing that the trusteeship was validly conceived, operated, supervised, and terminated at an ap-

propriate time. This it not only failed to do but it actually resisted it. Oliver's mismanagement continued to characterize his activities; a fact recognized by Field, who chose to delegate virtually all of his authority to him. Directly contrary to the enunciated purposes of the LMRDA, the trusteeship was used to stifle democratic processes in the Local and to perpetuate a highly inept, possibly a corrupt, administration.

Oliver, in his designated official capacity, sought to consolidate his grip on the union, to remove potential threats to his power by blacklisting or securing passage of bogus election qualifications, and, when faced with defeat in spite of his efforts, to throw out the election. The response of Field and the International to these efforts was bold-faced cooperation. Not until the Secretary of Labor moved to intervene did Field make an effort to do his job and to set in motion the machinery to reinstate local control.

Two executive board members of the International supervised the election. They asked if there were any protests concerning the eligibility of voters or candidates, and did not receive, find, or make any. Once the election results were in, however, the International refused to abide by them. It chose instead to disqualify the apparent winner primarily on the basis of constitutional provisions inappropriately passed by Oliver, unapproved by the International, and stipulated to have been without effect at the time of the election.

We need not speculate on the possible motives of those who were placed in a fiduciary capacity by the trusteeship. The record shows that their actions were blatantly contrary to those principles which the LMRDA intended to foster, and they persisted in such conduct despite the protests of large numbers of the Local's members.

In the words of the District Court, this suit was obvi-

ously "necessary for the relief obtained". The order making Oliver, Field, and the International jointly and severally liable for attorney fees and expenses along with the Local is sustained.

The Cross Appeal

The cross appellants (individual plaintiffs) argue that attorney fees should have included compensation for 387.15 hours of time spent, rather than the 250 hours allowed by the Court. It seems clear from the record, however, that plaintiffs sought pay for time spent on aspects of the case common to those pursued by or exclusively within the province of the Secretary [Titles III and IV]. We are unable to say that the trial judge, intimately acquainted as he was with all facets of this difficult case and with these overlapping efforts, abused his discretion in appraising the amount appropriately awardable. We feel no warrant to interfere with that appraisal, *Weeks* v. *Southern Bell Tel. & Tel. Co.*, 5 Cir. 1972, 467 F.2d 95; *Johnson* v. *Georgia Highway Express, Inc.*, 5 Cir. 1974, 488 F.2d 714.

As to the two year term of office prescribed by the District Court, Article XIII, Section 1, of the ILA Constitution so provided unless the Local By-laws specified otherwise and there was no such specification in effect at the time of the election.

The Judgment of the District Court rendered in response to the Secretary's suit being moot, as hereinabove set forth, the appeal as to that aspect of the case is dismissed.

In all other respects the Judgment of the District Court is

Affirmed.

APPENDIX B

Statutory Provisions Involved.

The *Labor-Management Reporting and Disclosure Act of 1959* provides, in pertinent parts, as follows:

29 U. S. C. § 462. *Purposes for establishment of trusteeship.*

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate object of such labor organization. (Pub.L. 86-257, Title III, § 302, Sept. 14, 1959, 73 Stat. 531).

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29 U. S. C. § 464. *Civil action for enforcement*

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Presumptions of validity or invalidity of trusteeship

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the

date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 462 of this title. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate. (Pub.L. 86-257 Title III § 304, Sept. 14, 1959, 73 Stat. 531).

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29 U. S. C. § 481. Terms of office and election procedures —Officers of national or international labor organizations; manner of election.

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(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed). . . . The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter. (Pub.L. 86-257, Title IV, § 401, Sept. 14, 1959, 73 Stat. 532).

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29 U. S. C. § 482. Enforcement—Filing of complaint; presumption of validity of challenged election.

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provisions of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to be believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and

such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

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(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. . . . (Pub.L. 86—257, Title IV, § 402, Sept. 14, 1959, 73 Stat. 534).

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29 U. S. C. § 483. Application of other laws; existing rights and remedies; exclusiveness of remedy for challenging election.

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive. (Pub.L. 86-257, Title IV, § 403, Sept. 14, 1959, 73 Stat. 534.)